

1-19-2011

# Stonebrook Construction v. Chase Home Finance Clerk's Record v. 2 Dckt. 37868

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## Recommended Citation

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Vol. 2 of 2

LAW CLERK

IN THE

volume 2 of 2

SUPREME COURT

OF THE

STATE OF IDAHO

STONEBROOK CONSTRUCTION, LLC,

Plaintiff and

Appellant

vs.

CHASE HOME FINANCE, LLC,

Defendant and

Respondent,

JOSIUS ASHBY AND KATRINA ASHBY

Defendants.

*Appealed from the District Court of the* Seventh *Judicial*

*District of the State of Idaho, in and for* Honneville *County*

*Hon.* Joel E. Tingey *District Judge*

B.J. Driscoll

P.O. Box 50731 Idaho Falls, ID 83405-07301

Steven F. Schosberger

P.O. Box 1617 Boise, ID 83701

Supreme Court

Attorney for Respondent

Filed this

day of

20

Clerk

By

Deputy

37868

COPY

FILED - COPY  
JAN 19 2011  
Attorney for Appellant  
Attorney for Respondent

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STONEBROOK CONSTRUCTION, LLC, an)  
Idaho Limited Liability Company,)

Plaintiff(s),

vs.

JOSHUA ASHBY and KATRINA ASHBY, )  
Husband and wife; ALLIANCE TITLE )  
& ESCROW CORP.; and CHASE HOME )  
FINANCE, LLC, )

Defendant(s).

Case No. CV-09-835

MINUTE ENTRY

On the 23rd day of March, 2010, Plaintiff's motion to amend complaint came before the Honorable Joel E. Tingey, District Judge, in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. B.J. Driscoll appeared on behalf of the Plaintiff.

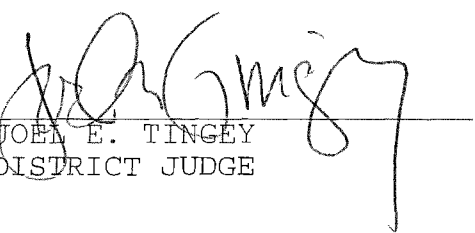
Ms. Beth Smethers appeared on behalf of the Defendant.

Mr. Driscoll presented Plaintiff's motion to amend complaint. Ms. Smethers presented argument in opposition to the motion.

The Court granted Plaintiff's motion to amend complaint.

Mr. Driscoll will prepare a proposed order for the Court's signature.

Court was thus adjourned.

  
JOEL E. TINGEY  
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 23 day of March, 2010, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE

ms  
Deputy Court Clerk

B. J. Driscoll  
PO Box 50731  
Idaho Falls, ID 83405

Steven F. Schossberger  
Beth Smethers  
PO Box 1617  
Boise, ID 83701-1617

B. J. Driscoll, Esq. – ISB # 7010  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
Telephone: (208) 524-0731  
Facsimile: (208) 529-4166  
Email: bjd@eidaholaw.com

Attorneys for Stonebrook Construction, LLC

BONNEVILLE COUNTY  
IDAHO  
10 MAR 25 P4:27

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STONEBROOK CONSTRUCTION, LLC,  
an Idaho Limited Liability Company,

Plaintiff,

v.

JOSHUA ASHBY and KATRINA ASHBY,  
husband and wife; ALLIANCE TITLE &  
ESCROW CORP.; and CHASE HOME  
FINANCE, LLC;

Defendants.

Case No. CV-09-835

**ORDER GRANTING MOTION TO  
AMEND COMPLAINT**

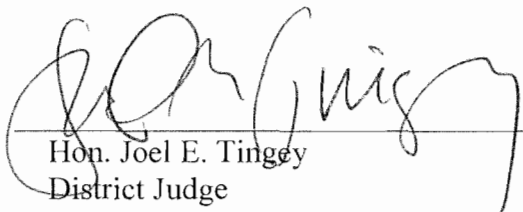
THIS MATTER having come on regularly for hearing on plaintiff's Motion to Amend Complaint before the Honorable Joel E. Tingey, District Judge on March 23, 2010, with plaintiff, Stonebrook Construction, LLC, appearing by and through B. J. Driscoll Esq., of the firm Smith, Driscoll & Associates, PLLC, and defendant, Chase Home Finance, LLC, appearing by and through Beth Smethers, Esq., of the firm Hawley Troxell Ennis & Hawley LLP; and the Court having reviewed its files, considered oral arguments from counsel, and otherwise being fully advised on the premises;

MAR 23 2010

Stonebrook Construction, LLC's Motion to Amend Complaint is hereby  
GRANTED and defendants shall have twenty (20) days to file an answer.

MADE AND ENTERED this 25 day of March, 2010.

By:

  
Hon. Joel E. Tingey  
District Judge

### CERTIFICATE OF SERVICE

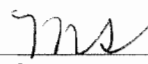
I HEREBY CERTIFY that on this 25 day of March, 2010, I caused a true and correct copy of the foregoing **ORDER GRANTING MOTION TO AMEND COMPLAINT** to be served, by placing the same in a sealed envelope and depositing in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

B. J. Driscoll, Esq.  
SMITH, DRISCOLL  
& ASSOCIATES, PLLC  
P.O. Box 50731  
Idaho Falls, ID 83405-0731

☒ U. S. Mail  
☐ Fax  
☐ Overnight Delivery  
☐ Hand Delivery

Steven F. Schossberger, Esq.  
Beth Smethers, Esq.  
HAWLEY, TROXELL, ENNIS  
& HAWLEY, LLP  
877 Main Street, Suite 1000  
P. O. Box 1617  
Boise, ID 83701-1617

☒ U. S. Mail  
☐ Fax  
☐ Overnight Delivery  
☐ Hand Delivery

  
Clerk of the Court

B. J. Driscoll, Esq. – ISB # 7010  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
Telephone: (208) 524-0731  
Facsimile: (208) 529-4166  
Email: bjd@eidaholaw.com

BONNEVILLE COUNTY  
JAN 20 2010 PM 3:45

Attorneys for Stonebrook Construction, LLC

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STONEBROOK CONSTRUCTION, LLC,  
an Idaho Limited Liability Company,

Plaintiff,

v.

JOSHUA ASHBY and KATRINA ASHBY,  
husband and wife; ALLIANCE TITLE &  
ESCROW CORP.; and CHASE HOME  
FINANCE, LLC;

Defendants.

Case No. CV-09-835

**BRIEF IN OPPOSITION TO  
DEFENDANT CHASE HOME  
FINANCE, LLC'S MOTION FOR  
SUMMARY JUDGMENT**

I. INTRODUCTION.

The plaintiff, Stonebrook Construction, LLC ("Stonebrook"), files this brief in opposition to the motion for summary judgment filed by the defendant, Chase Home Finance, LLC ("Chase"). As explained more fully below, the court should deny Chase's motion for summary judgment against Stonebrook's Claims For Relief Nos. 2, 3, and 4 because Stonebrook complied with, or in the alternative, substantially complied with the registration requirements of the Idaho Contractor Registration Act (the "Act"). I.C. § 54-5201, *et seq.* Moreover, Chase is not within the class of persons the Act is designed to protect.

**BRIEF IN OPPOSITION TO DEFENDANT CHASE HOME FINANCE, LLC'S  
MOTION FOR SUMMARY JUDGMENT – Page 1**

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## II. STATEMENT OF UNDISPUTED MATERIAL FACTS.

Stonebrook generally does not dispute Chase's Statement of Undisputed Material Facts, but does dispute ¶5 as discussed hereinbelow.<sup>1</sup> Additionally, Stonebrook provides the following material facts critical to proper disposition of this motion.

On April 19, 2006, Tyler Schwendiman ("Schwendiman") and Brandon Burton ("Burton") filed a Certificate of Assumed Business Name with the Idaho Secretary of State to transact the business of "construction" under the assumed business name of "Stonebrook Construction."<sup>2</sup>

On or about May 2, 2006, Schwendiman received from the Idaho Bureau of Occupational Licenses ("IBOL") a registered general contractor license, License No. RCT-15992, in the name of "Tyler Schwendiman d/b/a Stonebrook Construction."<sup>3</sup> The IBOL reports that no disciplinary action has been taken against Stonebrook Construction.<sup>4</sup> Since May 2, 2006, Stonebrook Construction has maintained its contractor's license with IBOL in good standing.<sup>5</sup>

On February 12, 2007, Schwendiman and Burton filed Articles of Organization for Limited Liability Company with the Idaho Secretary of State to form "Stonebrook Construction, LLC."<sup>6</sup>

From 2006 to the present, Schwendiman and Burton have conducted their construction business under the name Stonebrook Construction or Stonebrook

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<sup>1</sup> See p. 3 of Defendant Chase Home Finance, LLC's Memorandum in Support of Motion for Summary Judgment dated March 11, 2010, already on file with the court.

<sup>2</sup> See Affidavit of Tyler Schwendiman and Exhibit "A" attached thereto, filed concurrently herewith.

<sup>3</sup> See Affidavit of Tyler Schwendiman filed concurrently herewith.

<sup>4</sup> See Affidavit of Tyler Schwendiman filed concurrently herewith.

<sup>5</sup> See Affidavit of Tyler Schwendiman filed concurrently herewith.

<sup>6</sup> See Exhibit "B" to the Affidavit of Tyler Schwendiman filed concurrently herewith.



Construction, LLC.<sup>7</sup> Schwendiman and Burton's telephone numbers and addresses have not changed since they filed the Certificate of Assumed Business Name in 2006.<sup>8</sup>

III. THE COURT SHOULD DENY CHASE'S MOTION BECAUSE STONEBROOK COMPLIED WITH THE REGISTRATION REQUIREMENTS OF THE ACT.

The Act requires any person acting as a "contractor" within the state of Idaho to register with the IBOL. I.C. § 54-5204(1). The Act defines "contractor" as a "person who in any capacity undertakes . . . [to] perform construction." I.C. § 54-5203(4)(a). The Act defines a "person" as "any individual, firm, partnership, limited liability company . . . or other entity or organization capable of conducting business, *or any combination thereof acting as a unit.*" I.C. § 54-5203(6) (emphasis added).

Importantly, the Act expressly defines the "combination" of individuals and entities, not the separate component members, as the "person" to be registered under the Act. The Act does not require separate registration for each individual, each partner, or each limited liability company, but expressly limits registration to the "person" comprised of the "combination" of individuals and business entities "acting as a unit."

In interpreting the Act, a court should interpret the language "according to the plain, express meaning of the provision in question." *State v. Yager*, 139 Idaho 680, 689 (2004). "A construction that leads to an absurd or unreasonably harsh result is disfavored." *Id.* at 690. "The objective in interpreting a statute . . . is to derive the intent of the legislative body that adopted it." *Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 131 (2007) (citation omitted). The express policy of the Act is

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<sup>7</sup> See Affidavit of Tyler Schwendiman filed concurrently herewith.

<sup>8</sup> See Affidavit of Tyler Schwendiman filed concurrently herewith.

“to provide a mechanism to remove from practice incompetent, dishonest, or unprincipled practitioners of construction.” I.C. § 54-5202.

Here, Schwendiman and Burton, doing business at all times under the name Stonebrook Construction as a partnership and then as a limited liability company, are clearly a “combination” of individuals and business entities “acting as a unit” to perform construction in the state of Idaho. Schwendiman and Burton are the only individuals listed on the Certificate of Assumed Business name for Stonebrook Construction. They are the only individuals listed on the Articles of Organization for Limited Liability Company. Their addresses are the same on both filings. This “person” of Stonebrook Construction has been continuously licensed with LBOL to perform construction from May 2, 2006 to the present. As such, Stonebrook has complied with the Act.

Chase challenges Stonebrook’s lien by arguing that the Act requires Stonebrook Construction, LLC to obtain a separate, additional license because the Act’s definition of “person” mentions limited liability companies. However, Chase’s argument ignores the “plain, express meaning” of the statutory definition providing for a “combination . . . acting as a unit.” Chase does not consider Stonebrook’s compliance as a “combination” of individuals and business entities “acting as a unit” as expressly permitted under the Act. Instead, Chase seeks a construction that would lead to an “unreasonably harsh result,” *Yager, supra*, i.e., denying Stonebrook—a small local construction firm—a significant lien claim in difficult economic times for work Stonebrook completed but for which it was never paid.

Moreover, the Act expressly provides that no duplicate registration shall be required of a “person” otherwise licensed to perform construction “so long as such person

is not acting with the intent to evade this chapter.” I.C. § 54-5205(1). Chase’s argument would require duplicate licensing for Stonebrook even though there are no facts suggesting Stonebrook is attempting to evade the registration requirements. To the contrary, the consistency of Stonebrook’s filings with the same name of the business, same names of the individuals operating the business, and the same addresses for those individuals all demonstrate Stonebrook’s intent to comply with the Act, not the intent to evade it.

Finally, Chase’s strict interpretation of the Act runs contrary to the express policy of the Act to “provide a mechanism to remove from practice incompetent, dishonest, or unprincipled practitioners of construction.” I.C. § 54-5202. Nothing in the record suggests Stonebrook is “incompetent, dishonest, or unprincipled.” Rather, the IBOL reports that no disciplinary action has been required against Stonebrook.

Based on Stonebrook’s compliance with the plain language and the express purpose of the Act, the court should deny Chase’s motion. Invalidating Stonebrook’s lien and preventing its foreclosure would be unreasonably punitive.

IV. THE COURT SHOULD DENY CHASE’S MOTION BECAUSE STONEBROOK SUBSTANTIALLY COMPLIED WITH THE REGISTRATION REQUIREMENTS OF THE ACT.

The Idaho Legislature states, “The rule of the common law that statutes in derogation thereof are to be strictly construed, has no application to these compiled laws.” I.C. § 73-102(1). Rather, the provisions of the Idaho Code “and all proceedings under them are to be liberally construed, with a view to effect their objects and to promote justice.” *Id.*

The Idaho Supreme Court has not specifically discussed whether the doctrine of substantial compliance applies to the Act, but the Court has long-applied the doctrine of substantial compliance and liberal construction to other statutes involving a contractor's right to lien. "Mechanic's and other related liens are creatures of statute, and statutory requirements must be substantially complied with in order to perfect a valid lien."

*Pierson v. Sewell*, 97 Idaho 38, 41 (1975) (citation omitted). "The provisions of our mechanics' and laborers' lien law as well as all other lien statutes, must be liberally construed with a view to effect their objects and promote justice." *Seafoam Mines Corp. v. Vaughn*, 56 Idaho 342, 352 (1936). "The purpose of these statutes is to compensate persons who perform labor upon or furnish material to be used in the construction, alteration or repair of a building or structure." *Pierson, supra*, 97 Idaho at 41 (citation omitted).

Further, courts from several other neighboring states with similar contractor registration statutes have applied the doctrine of substantial compliance. *See, e.g., Gross v. Bayshore Land Co.*, 710 P.2d 1007 (Alaska 1985); *Aesthetic Property Maintenance, Inc. v. Capital Indem. Corp.*, 900 P.2d 1210 (Ariz. 1995); *Latipac, Inc. v. Superior Court*, 411 P.2d 564 (Cal. 1966); *Nevada Equities, Inc. v. Willard Pease Drilling Co.*, 440 P.2d 122 (Nev. 1968); *Koehler v. Donnelly*, 838 P. 2d 980 (N.M. 1992); *Arctic Stone, Ltd. v. Dadvar*, 112 P.2d 582 (Wash. App. 2005). In these states that have adopted the doctrine, courts typically permit substantial compliance when the contractor's conduct satisfies the general policy or purpose of the contractor registration statute.

Whether a party has substantially complied with the requirements of a statute is a question of law. *Jahnke v. County of Bingham*, 115 Idaho 548, 551 (Ct.App. 1989).

Here, the court should hold that a contractor's substantial compliance may satisfy the requirements of the Act. Additionally, the court should rule as a matter of law that Stonebrook substantially complied with the requirements of the Act. The undisputed facts show that Schwendiman and Burton knew of the Act's basic registration requirements and obtained a license from the IBOL within weeks less of filing their Certificate of Assumed Business Name for Stonebrook Construction. Thereafter, Schwendiman and Burton kept this license continuously active and in good standing with the IBOL without any reported disciplinary incidents. Schwendiman and Burton are still located at the same addresses and continue to operate as Stonebrook Construction.

Stonebrook's efforts and actions demonstrate a concerted effort to comply with the Act, not to evade it. Acknowledging Stonebrook's substantial compliance with the Act does not detract from the purpose of the Act to protect the public from "incompetent, dishonest, or unprincipled" contractors. I.C. § 54-5202.

V. THE COURT SHOULD DENY CHASE'S MOTION BECAUSE CHASE IS NOT IN THE CLASS OF PERSONS TO BE PROTECTED BY THE ACT.

In several jurisdictions with contractor licensing laws like Idaho's Act, courts will permit claims by unlicensed contractors if the party opposing the contractor's action is not within the class of individuals targeted for protection by the law. In *Loader v. Scott Const. Corp.*, 681 P.2d 1227, 1230 (Utah 1984), the court refused to apply the rule denying recovery to an unlicensed contractor because, among other things, the party opposing the action was not a member of class the licensing statute was designed to protect. The *Loader* court also relied on the fact that the unlicensed contractor had fully performed and the contractor's unlicensed status was the result of a good faith mistake, additional relevant factors that this court could consider.

In *Vogel v. Supply Co.*, 177 S.E.2d 273, 282 (N.C. 1970), the court stated, “The purpose of the enactment . . . is to ‘protect the public from incompetent builders.’” Because there was no injury to the public, the *Vogel* court permitted the unlicensed general contractor to pursue its claim against a subcontractor. *Id.*; *see generally*, *Marketing Specialists, Inc. v. Bruni*, 129 F.R.D. 35, 44-45 (W.D.N.Y. 1989).

Although Idaho appellate courts have not limited application of the Act to a protected class, the Idaho Supreme Court’s language from similar cases is instructive. In *Kinney v. Smith*, 95 Idaho 328, 331 (1973), the Court explained, “In order for the violation of a statute to be pertinent in a particular case, the statute must be ... designed to protect (1) the class of persons in which the plaintiff is included (2) against the type of harm which has in fact occurred as a result of its violation.” Although *Kinney* involved a motor vehicle statute, the Court first considered whether the party relying on the statute was within the class of persons the statute was designed to protect and whether alleged statutory violation caused the harm complained of. In a subsequent case involving a statute regulating the sale of seed, the Court quoted *Kinney* and again considered whether the party relying on the statute was within the class of protected persons. *Nezperce Storage Co. v. Zenner*, 105 Idaho 464, 468 (1983). These cases demonstrate that before applying any statute, the Idaho Supreme Court considers the class of persons the statute is designed to protect.

Here, the express purpose of the Act is to protect the public health, safety and welfare by providing “a mechanism to remove from practice incompetent, dishonest, or unprincipled practitioners of construction.” I.C. § 54-5202. The purpose of the Act is not to protect lenders’ security interests in real property against mechanic’s lien claims by

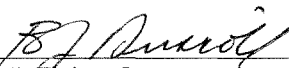
unpaid contractors that fully performed. Chase does not allege and does not present any evidence that Stonebrook is an incompetent, dishonest, or unprincipled contractor. Chase does not explain how the public health, safety, or welfare will be furthered by invalidating Stonebrook's lien. Chase offers no explanation of how the purposes of the Act will be served by invalidating Stonebrook's lien. Chase does not explain how it could fall within the class of persons the Act is designed to protect. Instead, Chase seeks to invalidate Stonebrook's lien based on an erroneously narrow reading of the statute. In reality, Chase's motion asks the court to reject the mechanic's lien of an unpaid contractor that fully performed and that cannot recover against a now-bankrupt homeowner. Chase is not in the class of persons to be protected by the Act and invalidating Stonebrook's lien does not further the purpose of the Act.

VI. CONCLUSION.

For the reasons set forth herein, the court should deny Chase's motion for summary judgment.

DATED this 20 day of April, 2010.

SMITH, DRISCOLL & ASSOCIATES, PLLC

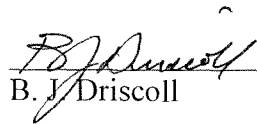
  
\_\_\_\_\_  
B. J. Driscoll, Esq.  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20 day of April, 2010, I caused a true and correct copy of the foregoing **BRIEF IN OPPOSITION TO DEFENDANT CHASE HOME FINANCE, LLC'S MOTION FOR SUMMARY JUDGMENT** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

- ☐ U.S. Mail
- ☒ Facsimile Transmission
- ☐ Overnight Delivery
- ☐ Hand Delivery

Steven F. Schossberger, Esq.  
Beth Smethers, Esq.  
HAWLEY, TROXELL, ENNIS  
& HAWLEY, LLP  
877 Main Street, Suite 1000  
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Boise, ID 83701-1617

  
B. J. Driscoll



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Attorneys for Stonebrook Construction, LLC

BONNEVILLE COUNTY  
APR 20 PM 3:45

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STONEBROOK CONSTRUCTION, LLC,  
an Idaho Limited Liability Company,

Plaintiff,

v.

JOSHUA ASHBY and KATRINA ASHBY,  
husband and wife; ALLIANCE TITLE &  
ESCROW CORP.; and CHASE HOME  
FINANCE, LLC;

Defendants.

Case No. CV-09-835

**AFFIDAVIT OF  
TYLER SCHWENDIMAN**

STATE OF IDAHO                     )  
  ) ss.  
County of Bonneville             )

I, TYLER SCHWENDIMAN, states and declares the following under oath:

1. I a managing member of the plaintiff, Stonebrook Construction, LLC, in this action, I am over the age of 21, and I make this affidavit on my personal knowledge.

2. On April 19, 2006, my business partner, Brandon Burton, and I filed a Certificate of Assumed Business Name with the Idaho Secretary of State to transact the

business of “construction” under the assumed business name of “Stonebrook Construction.”

3. Attached hereto and marked as Exhibit “A” is a true and correct copy of the Certificate of Assumed Business Name for Stonebrook Construction.

4. On or about May 2, 2006, I received from the Idaho Bureau of Occupational Licenses (“IBOL”) a registered general contractor license, License No. RCT-15992, for “Tyler Schwendiman d/b/a Stonebrook Construction.”

5. Attached hereto and marked as Exhibit “B” is a true and correct copy of three pages printed from the IBOL’s website showing a contractor’s license search for “Stonebrook” and the results of that search showing license number RCT – 15992 and no disciplinary action.

6. The IBOL correctly reports that no disciplinary action has been taken against Stonebrook Construction.

7. Since May 2, 2006, Stonebrook Construction has maintained its contractor’s license with IBOL in good standing.

8. On February 12, 2007, Mr. Burton and I changed our business entity of Stonebrook Construction to a limited liability company by filing Articles of Organization for Limited Liability Company with the Idaho Secretary of State. Attached hereto and marked as Exhibit “C” is a true and correct copy of the Articles of Organization we filed for Stonebrook Construction, LLC.

9. From 2006 to the present, Mr. Burton and I have continuously conducted our construction business under the name Stonebrook Construction, first as a d/b/a and then as a limited liability company. Mr. Burton and my addresses and telephone numbers

are still the same as when we first filed the Certificate of Assumed Business Name in 2006.

10. Stonebrook Construction completed all of the work required for construction of the home located at 1944 Lexington, Idaho Falls, Idaho, that is the property subject to Stonebrook's lien in this case.

11. Mr. Burton and I have always tried to comply with the registration requirements of the Idaho Contractor Registration Act. After we received a copy of Chase's motion challenging the adequacy of our license in this case, we contacted the Idaho Bureau of Occupational Licenses and submitted a new application for a contractor's license for Stonebrook Construction, LLC. The IBOL reviewed the application at its regular meeting in April 2010. We understand that this new license has been approved, but we have not received it at the time of signing this affidavit.

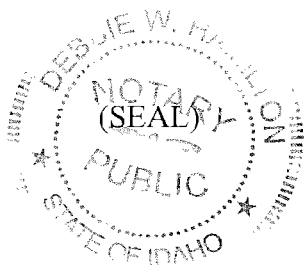
Further your affiant sayeth naught.

DATED this 20 day of April, 2010.

By: \_\_\_\_\_

Tyler Schwendiman

SUBSCRIBED AND SWORN TO before me this 20th day of April, 2010.



\_\_\_\_\_

Notary Public for the State of Idaho  
Residing at Idaho Falls, Idaho  
My Commission Expires: 04/11/11

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20 day of April, 2010, I caused a true and correct copy of the foregoing **AFFIDAVIT OF TYLER SCHWENDIMAN** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

- ☐ U.S. Mail
- ☒ Facsimile Transmission
- ☐ Overnight Delivery
- ☐ Hand Delivery

Steven F. Schossberger, Esq.  
Beth Smethers, Esq.  
HAWLEY, TROXELL, ENNIS  
& HAWLEY, LLP  
877 Main Street, Suite 1000  
P. O. Box 1617  
Boise, ID 83701-1617

  
\_\_\_\_\_  
B. J. Driscoll

***EXHIBIT “A”***

FILED EFFECTIVE

227



## CERTIFICATE OF ASSUMED BUSINESS NAME

Pursuant to Section 53-504, Idaho Code, the undersigned  
submits for filing a certificate of Assumed Business Name.

Please type or print legibly.

NOTE: See instructions on reverse before filing.

2006 APR 19 PM 2:14

SECRETARY OF STATE OF IDAHO

1. The assumed business name which the undersigned use(s) in the transaction of business is:

Stonebrook Construction

2. The true name(s) and business address(es) of the entity or individual(s) doing business under the assumed business name:

Name

Complete Address

Tyler Schwendiman

5304 Tildy Cir. Ammon, ID 83401

Brandon Burton

3630 Spectrum Dr. Idaho Falls, ID 83401

3. The general type of business transacted under the assumed business name is:

- |  |  |
|--|--|
| <input type="checkbox"/> Retail Trade                        | <input type="checkbox"/> Transportation and Public Utilities |
| <input type="checkbox"/> Wholesale Trade                     | <input checked="" type="checkbox"/> Construction             |
| <input type="checkbox"/> Services                            | <input type="checkbox"/> Agriculture                         |
| <input type="checkbox"/> Manufacturing                       | <input type="checkbox"/> Mining                              |
| <input type="checkbox"/> Finance, Insurance, and Real Estate |  |

Submit Certificate of  
Assumed Business  
Name and \$25.00 fee to:

Secretary of State  
700 West Jefferson  
Basement West  
PO Box 83720  
Boise ID 83720-0080  
208 334-2301

4. The name and address to which future correspondence should be addressed:

Tyler Schwendiman

5304 Tildy Cir

Ammon, ID 83401

5. Name and address for this acknowledgment copy is (if other than # 4 above):

Phone number (optional):

208-390-4285

Secretary of State use only

Signature: \_\_\_\_\_

(signature required)

Printed Name: Tyler Schwendiman

Capacity/Title: Owner

(see instruction # 8 on back of form)

2:\comp\forms\assn\assn13ahb\p45  
Revised 06/2003

IDAHO SECRETARY OF STATE  
04/19/2006 05:00  
CK: 782881 CT: 172899 BH: 958191  
1 @ 25.00 = 25.00 ASSUM NAME # 2

D98965

***EXHIBIT “B”***

State of Idaho

# Bureau Of Occupational Licer

## Public Record Information

Search By Profession (Leave blank to select ALL Professions)

Profession: CONTRACTORS

License Type:

Search By License Number (Letters - Numbers) like AAA-NNNN

License Number:

Issue Date:

Search By Name (Individual and/or Business and/or Owner)

Last Name:

First Name:

(Optional)

Business Name: stonebrook

Owner Name:

Search By City and/or Postal Code

City:


Postal Code:



State of Idaho

## Bureau Of Occupational Licenses

Public Record Information

Name	Number	Expires	Action	Owner Name	City, State, Zip	Phone	Supervisor?	Specialty
 SCHWENDIMAN, TYLER	RCT-15992	8/10/2010		AMMON ID 83401	208 390-4285	No	GENERAL RESIDENTIAL	

State of Idaho

## Bureau Of Occupational Licenses

## Public Record Information (Detail)

## Public Record

Name: TYLER SCHWENDIMAN  
Profession: IDAHO CONTRACTORS BOARD  
Type: REGISTERED CONTRACTOR  
Number: RCT - 15992  
Address Of Record:  
City/State/Zip: AMMON ID 83401  
Country: USA  
Business Phone: (208) 390 - 4285  
Original Date of Issue: 5/2/2006  
Registered/Licensed By:  
License Status: Current  
Discipline:  
Expiration Date: 8/10/2010

## Disciplinary Action

None

NOTE: This document is a copy of the electronic record of the person named above and constitutes a verification of that record. If official certification of this record is required, a written request must be submitted together with a \$10.00 fee to the Bureau of Occupational Licenses, 1109 Main St., Suite 220, Boise, ID 83702.

***EXHIBIT “C”***



# ARTICLES OF ORGANIZATION LIMITED LIABILITY COMPANY

2007 FEB 12 AM 9:14

(Instructions on back of application)

SECRETARY OF STATE  
STATE OF IDAHO

1. The name of the limited liability company is:

Stonebrook Construction L.L.C.

2. The street address of the initial registered office is:

3630 Spectrum Drive, Idaho Falls, ID 83401

and the name of the initial registered agent at the above address is:

Brandon Burton

3. The mailing address for future correspondence is:

3630 Spectrum Dr, Idaho Falls, ID 83401

4. Management of the limited liability company will be vested in:

Manager(s) ☒ or Member(s) ☐ (please check the appropriate box)

5. If management is to be vested in one or more manager(s), list the name(s) and address(es) of at least one initial manager. If management is to be vested in the member(s), list the name(s) and address(es) of at least one initial member.

Name

Address

Brandon Burton3630 Spectrum Dr, Idaho Falls, ID 83401Tyler Schwendiman5304 Tildy Circle, Ammon, ID 83406

6. Signature of at least one person responsible for forming the limited liability company:

Signature: *Brandon Burton*Typed Name: Brandon BurtonCapacity: 50% Owner

Signature: \_\_\_\_\_

Typed Name: Tyler SchwendimanCapacity: 50% Owner

Secretary of State use only

WS 9168

IDAHO SECRETARY OF STATE  
02/13/2007 05:00  
CX: 1128 CT: 289635 BH: 1032577  
1 @ 100.00 = 100.00 ORGAN LLC # 2Idaho Limited Liability Company Form 1001  
Revised 07/2002

Web Form

Steven F. Schossberger, ISB No. 5358  
 Beth Smethers, ISB No. 7700  
 HAWLEY TROXELL ENNIS & HAWLEY LLP  
 877 Main Street, Suite 1000  
 P.O. Box 1617  
 Boise, ID 83701-1617  
 Telephone: 208.344.6000  
 Facsimile: 208.954.5260  
 Email: sschossberger@hawleytroxell.com  
 bsmethers@hawleytroxell.com

Attorneys for Defendant Chase Home Finance, LLC

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STONEBROOK CONSTRUCTION, LLC, )  
 an Idaho Limited Liability Company, )

Plaintiff, )

vs. )

JOSHUA ASHBY and KATRINA ASHBY, )  
 husband and wife; ALLIANCE TITLE & )  
 ESCROW CORP.; and CHASE HOME )  
 FINANCE, LLC, )

Defendants. )

Case No. CV-09-835

DEFENDANT CHASE HOME  
 FINANCE, LLC'S REPLY  
 MEMORANDUM IN SUPPORT OF  
 MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant Chase Home Finance, LLC ("Chase"), by and through its undersigned counsel of record, Hawley Troxell Ennis & Hawley LLP, and respectfully submits the following reply memorandum in support of motion for summary judgment.

# I. INTRODUCTION

Plaintiff Stonebrook Construction, LLC's ("Stonebrook") memorandum in opposition to Chase's motion for summary judgment contains various justifications for its failure to register as a contractor under the Idaho Contractor Registration Act (the "Act"), but lacks sufficient facts or

DEFENDANT CHASE HOME FINANCE, LLC'S REPLY  
 MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY  
 JUDGMENT - 1

legal support to prevent the entry of summary judgment due to its registration failure. Stonebrook cites no Idaho case law to support its assertion that substantial compliance is sufficient. Nor does Stonebrook cite any Idaho case law that a lender cannot assert that a lien is invalid due to a contractor's failure to register. Further, even if Idaho recognized substantial compliance, Stonebrook did not substantially comply with the statute. Although one member of Stonebrook is a registered contractor, the other member is not. Further, Stonebrook was the entity with which the Ashbys contracted and Stonebrook was the entity that filed the claim of lien. Stonebrook's claim of lien is invalid due to Stonebrook's failure to register as a contractor and Chase respectfully submits that this Court should grant Chase's motion for summary judgment.

## **II. ARGUMENT**

### **A. Stonebrook failed to comply with the registration requirements of the Act.**

In Stonebrook's opposition brief, Stonebrook does not dispute the fact that it acted as a contractor for the Joshua and Katrina Ashby (collectively, the "Ashbys"). Nor does Stonebrook dispute the fact that the entity Stonebrook is not a registered contractor pursuant to the Act. Rather, Stonebrook asserts that it complied with the Act because the Act defines a person of "any combination thereof acting as a unit." However, in this case, Stonebrook is the "person" asserting the claim of lien. Further, only one member of Stonebrook is a registered general contractor.

A "contractor" under the Act is defined as "[a]ny person who in any capacity undertakes, offers to undertake . . . or submits a bid to, or does himself or by others, performs construction." Idaho Code § 54-5203 (4)(a). The definition of "person" includes a partnership and a limited liability company. Idaho Code § 54-203(6). If a limited liability company wants to act as a

contractor, that limited liability company must apply for registration and includes information such as “the name and address of each . . . member . . . claiming an ownership interest in the business entity. Idaho Code § 54-5210(c).

The fact that one member of a limited liability company is a registered contractor is not sufficient when trying to assert a claim or lien on behalf of that limited liability company. *Nickels v. Walker*, 395 P.2d 679, 681-82 (N.M. 1964). In *Nickels*, one member of a partnership was a registered contractor, but the other member and the partnership that was attempting to assert a mechanic’s lien were not. *Id.* at 680-81. The statute at issue had statutory language, similar to that of Idaho, that a contractor is defined as “a person, firm . . ., or any combination of any thereof.” The court held that the partnership could not assert a lien because the requirements were clear and unambiguous—the partnership was required to be licensed. *Id.* at 682. *See also Opp v. St. Paul Fire & Marine Ins. Co.*, 64 Cal. Rptr. 3d 260, 263-64 (Cal. Ct. App. 2007) (holding that although president of company was registered, the contracting party was the entity and the suit barred because that entity was not registered); *B&P Concrete, Inc. v. Turnbow*, 561 P.2d 329, 409, 411 (Ariz. Ct. App. 1997) (holding, in a case interpreting a statute that contains the language “a combination of any of them,” the action by the corporation was barred notwithstanding that its president held a valid license); *Bernard F. Hoste, Inc. v. Kortz*, 324 N.W.2d 46, 47 (Mich. Ct. App. 1982) (holding that the corporation was not entitled to operate without a license although an individual had obtained a license).

The “person” claiming a lien on the subject property is Stonebrook, not Schwendiman. Stonebrook is a completely separate entity from Schwendiman and has another member, Brandon Burton, who is not registered as required under the Act. **If both members of Stonebrook were registered contractors under the Act, Stonebrook might be able to assert that**

they were acting as a unit. However, Burton is not a registered contractor and the work was done by both of them through the entity Stonebrook.<sup>1</sup> The contract with the Ashbys was with Stonebrook and the claim of lien was filed by Stonebrook. Stonebrook simply cannot circumvent the requirements of the Act by claiming that one of the members of the entity that was acting as the contractor is registered under the Act. Particularly when Stonebrook does not even claim that Schwendiman was the only individual that worked on the subject property.

Further, if the Ashbys had a problem with the construction on the subject property, the Ashbys would have pursued an action against Stonebrook, not Schwendiman. Stonebrook was the contracting party and Stonebrook was the entity that worked on the subject property. Stonebrook's failure to register as a contractor is a complete bar to the claim of lien.

Stonebrook also claims that a finding of an invalid lien would create an unreasonably harsh result. This harsh result is the exactly the result intended by the Act. As plainly set forth in the Act, if a contractor fails to register under the Act, that contractor "shall be deemed to have conclusively waived any right to place a lien upon real property . . . ." Idaho Code § 54-5208. Based on this language, there is little doubt that the legislative intent was to inflict harsh consequences upon those who perform contracting work in good faith without the proper license. *Id.*; see also *B&P Concrete, Inc.*, 561 P.2d at 331 ("In barring suit by an unlicensed contract, there seems little doubt that the legislative intent is to furnish protection to the public by strict licensing requirements even where harsh consequences fall upon those who do contracting work

---

<sup>1</sup> Stonebrook can not separate out the work performed by Schwendiman and Burton. Yet, Stonebrook's lien claim seeks recovery for the total amount of the alleged work performed by both of them, including the work of the unlicensed contractor Burton, and of course, the unlicensed contractor, Stonebrook.



in good faith without an appropriate license”); *Bernard F. Hoste, Inc.*, 324 N.W.2d at 47 (“The courts of this state have consistently upheld this harsh penalty for noncompliance with the Residential Builder’s Act.”). In fact, “[p]ermitt[ing] an unlicensed contractor to recover on the ground that a loss would result to him would completely nullify that statute since every unlicensed contractor would sustain a loss or forfeiture unless he were allowed recovery.” *B&P Concrete, Inc.*, 561 P.2d at 332. This so-called harsh result can be avoided by simply registering under the Act and this is not a sufficient basis to circumvent the statutory requirement for contractor registration. These statutory requirements are clear and mandate what is necessary to properly create a lien on the property.

**B. Idaho has not recognized the doctrine of substantial compliance in relation to the Act and, in any event, Stonebrook did not substantially comply with the Act.**

Idaho has not recognized the doctrine of substantial compliance. Under Idaho law, mechanics’ liens are creations of statute and the lien claimant must comply with statutory requirements in order to perfect the lien. *Fairfax v. Ramirez*, 133 Idaho 72, 982 P.2d 375 (1999). Although Idaho does permit substantial compliance in some situations, the lien claimant is still required to comply with the statutory requirements. *Cornerstone Builders, Inc. v. McReynolds*, 136 Idaho 843, 41 P.3d 271 (Ct. App. 2001). The failure to at least substantially comply with the statutory requirements would render the statute a nullity. *Id.* at 846, 274.

The courts that do recognize substantial compliance have set forth certain criteria for substantial compliance. One of these criteria is that the contractor must possess a valid license at the time the contract is executed. *Bernard F. Hoste, Inc.*, 324 N.W.2d at 48. As referenced above, *Bernard* involves the president that is a registered contractor, but that entity was not registered. *Id.* at 47. The court held that this was insufficient for substantial compliance because

the entity was not licensed at the time of the contract and operated for a substantial period of time before the license was issued. *Id.* at 48.

Another criteria is that the contractor, although failing to register, complied with all of the registration requirements, such as obtained insurance and workers' compensation. *Gross v. Bayshore Land Co.*, 710 P.2d 1007, 1013 (Alaska 1986). The compliance must fall short of strict compliance but afford the public the same protection that strict compliance would offer. *Id.* See also *Aesthetic Property Maintenance, Inc. v. Capitol Indemnity Corp.*, 900 P.2d 1210, 1214 (Ariz. 1995) (holding that for substantial compliance, the contractor must be financially responsible by maintaining its liability insurance, surety bond, workers' compensation insurance, and any other requirements imposed by the registration act).

The cases holding that the contractor substantially complied generally involve a brief suspension that cause the contractor to merely be unregistered for a period of time; not a complete failure to register. *Koehler v. Donnelly*, 838 P.2d 980 (N.M. 1992). In *Koehler*, the court found substantial compliance because problems with mail delivery prevented the contractor from receiving renewal notices and the license was only suspended. *Id.* See also *Aesthetic Property Maintenance, Inc.* 900 P.2d at 1214 (holding that the contractor substantially complied because the license was only suspended for its failure to timely pay a renewal fee and the contractor paid its renewal fee upon discovery of the suspension).

In fact, cases applying substantial compliance have held that having one member of an entity registered is not sufficient for the registration of the entity. *Bernard F. Hoste, Inc.*, 324 N.W.2d 46; *Aesthetic Property Maintenance, Inc. v. Capitol Indemnity Corp.*, 900 P.2d 1210, 1212 n.1 (Ariz. 1995) (referring to *B&P Concrete, Inc.*, 561 P.2d 1210). A failure to register at

all simply prevents the public from ascertaining the contractor's status and ensuring it would be protected. *Gross*, 710 P.2d at 1013.

Idaho has not adopted a substantial compliance standard under the Act. The Act very clearly states that "[a] contractor that is not registered as set forth in [the Act] shall be denied and shall be deemed to have conclusively waived any right to place a lien upon real property as provided for in [the mechanic's lien statutes]." Idaho Code § 54-5205. Stonebrook has never registered under the Act and any claim of lien it asserts fails under this statute.

Additionally, even if Idaho recognized substantial compliance in this situation, Stonebrook failed to substantially comply. This is not a situation where Stonebrook was registered and its registration lapsed for a period of time. Stonebrook has never been a registered contractor and was not registered during the period of time that it was working on the subject property. Stonebrook's failure to register was a complete failure.

Contrary to Schwendiman's affidavit, if someone attempted to search the Idaho Bureau of Occupational Licenses for contractor registration, that person would not be able to find Schwendiman's registration by searching for Stonebrook Construction, LLC, Stonebrook Construction, or Stonebrook. Affidavit of Beth Smethers in Support of Motion for Summary Judgment, ¶¶ 3-6, Exh. A. This is contrary to the purpose of the statute and, even if recognized in Idaho, does not constitute substantial compliance. It is simply not sufficient to give the public the protection it should be afforded.

Further, although Stonebrook shows that it is a registered entity with the Idaho Secretary of State, Stonebrook fails to set forth any of the additional requirements of being a registered entity. These requirements include proof that Stonebrook has procured worker's compensation insurance, or a statement why it is not required for Stonebrook, and that Stonebrook has procured

a general liability policy, covering Stonebrook's construction operations in the sum of less than \$300,000. Idaho Code § 52-5210. Even if Idaho would recognize substantial compliance, Stonebrook would have to establish that it would be eligible for registration despite its lack of doing so. Stonebrook has failed to do even that. Schwendiman's sole registration is simply insufficient for a finding of substantial compliance. Schwendiman is not the contractor and is not the lien claimant in this case.

**C. The Act does not limit its remedies to any class of persons and Chase is the class of persons the Act is designed to protect.**

Stonebrook boldly asserts that Chase is not within the class of persons the Act is designed to protect, but cites nothing to support the applicability of that theory to the Act or to any other contractor registration act in any other state. There is simply nothing to support Stonebrook's assertion that Chase is not entitled to the protection under the Act.

The lien right provision of the Act states "[a] contractor that is not registered as set forth in [the Act] shall be denied and shall be deemed to have conclusively waived any right to place a lien upon real property as provided for in [the mechanic's lien statutes]." Idaho Code § 54-5205. There is nothing within this provision or any other provision of the Act that limits this protection to just the property owners.

In fact, within the entire "Statement of Purpose" and committee minutes on the Act, there is no mention of just protecting the property owners. Statement of Purpose for H.B. 163 (RS 14884; 2005); H. Bus. Comm. min. H.B. 163 (Feb. 23, 2005, pp. 2-6); Sen. Comm. / Hum. Res. Comm. min. H.B. 163 (March 10, 2005, pp. 2-6). The purpose of the Act was for the state to have a mechanism to remove contractors from the registry to protect the public. Statement of Purpose for H.B. 163 (RS 14884; 2005). Lenders are also part of the public and also have an

interest in good workmanship. If, as in the current situation, the property owners default on a loan with the lender and the lender has to pay a prior lien in order to foreclose on the property, the lender has an interest in the workmanship on the property that will be foreclosed. To further evidence this intent, the Idaho Bankers Association spoke in support of the Act during the committee meeting. H. Bus. Comm. min., p. 8; Sen. Comm. / Hum. Res. Comm. min. p. 4.

Although there is nothing in the record at this juncture to show that Stonebrook's work on the subject property was substandard, the purpose of requiring registration under the Act is to monitor contractors. To this end, it is particularly important for limited liability companies to register under the Act, so the board can fully evaluate all of the members of the limited liability company to ensure a previous registration has not been revoked for cause.

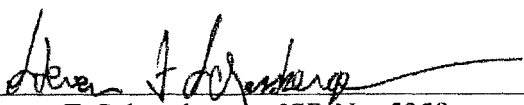
Stonebrook failed to register under the Act and has not presented anything other than blanket assertions that Chase is not part of the class of persons to be protected by the Act. The Act's protections are not limited and Stonebrook's claim of lien on the subject property is invalid as a matter of law.

### III. CONCLUSION

For each of the above and foregoing reasons, Chase's motion for summary judgment on the Third Amended Complaint should be granted in its entirety.

DATED THIS 27 day of April, 2010.

HAWLEY TROXELL ENNIS & HAWLEY LLP

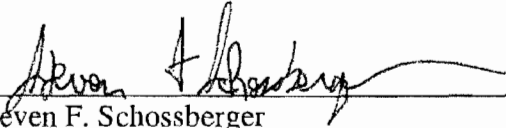
By   
Steven F. Schossberger, ISB No. 5358  
Attorneys for Defendant Chase Home  
Finance, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of April, 2010, I caused to be served a true copy of the foregoing DEFENDANT CHASE HOME FINANCE, LLC'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT by the method indicated below, and addressed to each of the following:

B. J. Driscoll, Esq.  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, ID 83405-0731  
[Attorneys for Plaintiff]

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ E-mail  
☒ Telecopy: 208.529.4166

  
Steven F. Schossberger

BONNEVILLE COUNTY

10 APR 27 PM 3:28

Steven F. Schossberger, ISB No. 5358  
 Beth Smethers, ISB No. 7700  
 HAWLEY TROXELL ENNIS & HAWLEY LLP  
 877 Main Street, Suite 1000  
 P.O. Box 1617  
 Boise, ID 83701-1617  
 Telephone: 208.344.6000  
 Facsimile: 208.954.5260  
 Email: sschossberger@hawleytroxell.com  
 bsmethers@hawleytroxell.com

Attorneys for Defendant Chase Home Finance, LLC

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STONEBROOK CONSTRUCTION, LLC, )  
 an Idaho Limited Liability Company, )

Plaintiff, )

vs. )

JOSHUA ASHBY and KATRINA ASHBY, )  
 husband and wife; ALLIANCE TITLE & )  
 ESCROW CORP.; and CHASE HOME )  
 FINANCE, LLC, )

Defendants. )

Case No. CV-09-835

AFFIDAVIT OF BETH SMETHERS IN  
 SUPPORT OF DEFENDANT CHASE  
 HOME FINANCE, LLC'S MOTION FOR  
 SUMMARY JUDGMENT

Beth Smethers, being first duly sworn upon oath, deposes and says:

1. I make this affidavit based on my personal knowledge in support of Defendant Chase Home Finance, LLC's ("Chase") motion for summary judgment on the third amended complaint.

2. I am a an attorney at the law firm Hawley Troxell Ennis & Hawley LLP, counsel of record for Chase.

AFFIDAVIT OF BETH SMETHERS IN SUPPORT OF DEFENDANT CHASE HOME  
 FINANCE, LLC'S MOTION FOR SUMMARY JUDGMENT - 1

3. On April 27, 2010, I performed an online search on the State of Idaho's website providing information from the State of Idaho Bureau of Occupational Licenses for contractors who are registered under the Idaho Contractor Registration Act. Title 54, Chapter 52, Idaho Code.

4. The State of Idaho Bureau of Occupational Licenses does not have Plaintiff Stonebrook Construction, LLC as a registered contractor.

5. I also conducted a search of the website to determine if that search would retrieve the registration of Stonebrook Construction, LLC member Tyler Schwendiman. My search under "Stonebrook Construction, LLC"; "Stonebrook Construction"; and "Stonebrook" did not return any results for Tyler Schwendiman or any other person or entity.

6. Attached hereto as Exhibit A is a true and correct copy of the searches and results for "Stonebrook Construction, LLC"; "Stonebrook Construction"; and "Stonebrook."

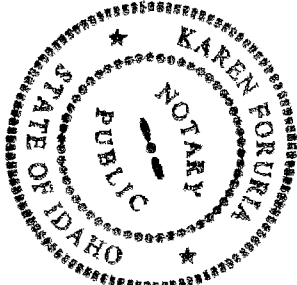
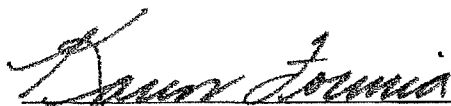
Further your affiant sayeth naught.



Beth Smethers

STATE OF IDAHO                    )  
  ) ss.  
County of Ada                    )

SUBSCRIBED AND SWORN before me this 27<sup>th</sup> day of April, 2010.

Notary Public for Idaho

Residing at Boise, Idaho

My commission expires 6-18-11

AFFIDAVIT OF BETH SMETHERS IN SUPPORT OF DEFENDANT CHASE HOME FINANCE, LLC'S MOTION FOR SUMMARY JUDGMENT - 2

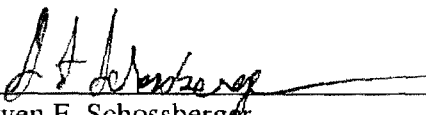


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of April, 2010, I caused to be served a true copy of the foregoing AFFIDAVIT OF BETH SMETHERS IN SUPPORT OF DEFENDANT CHASE HOME FINANCE, LLC'S MOTION FOR SUMMARY JUDGMENT by the method indicated below, and addressed to each of the following:

B. J. Driscoll, Esq.  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, ID 83405-0731  
[Attorneys for Plaintiff]

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ E-mail  
☒ Telecopy: 208.529.4166

  
\_\_\_\_\_  
Steven F. Schossberger

State of Idaho

Bureau Of Occupational Licenses  
Public Record Information

Search By Profession (Leave blank to select ALL Professions)

Profession: CONTRACTORS

License Type:

Search By License Number (Letters - Numbers) like AAA-NNNN

License Number:

Issue Date:

Search By Name (Individual and/or Business and/or Owner)

Last Name:

First Name:

(Optional)

Business Name: Stonebrook

Owner Name:

Search By City and/or Postal Code

City:

Postal Code:

142

EXHIBIT A

State of Idaho

## Bureau Of Occupational Licenses

Public Record Information

Name	Number	Expires	Action	Owner Name	City, State, Zip	Phone	Supervisor?	Specialty
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State of Idaho

## Bureau Of Occupational Licenses

Public Record Information

Search By Profession (Leave blank to select ALL Professions)

Profession: CONTRACTORS

License Type:

Search By License Number (Letters - Numbers) like AAA-NNNN

License Number:

Issue Date:

Search By Name (Individual and/or Business and/or Owner)

Last Name:

First Name:

(Optional)

Business Name: Stonebrook Construction

Owner Name:

Search By City and/or Postal Code

City:

Postal Code:

State of Idaho

## Bureau Of Occupational Licenses

Public Record Information

Name	Number	Expires	Action	Owner Name	City, State, Zip	Phone	Supervisor?	Specialty
------	--------	---------	--------	------------	------------------	-------	-------------	-----------

State of Idaho

## Bureau Of Occupational Licenses

Public Record Information

Search By Profession (Leave blank to select ALL Professions)

Profession: CONTRACTORS

License Type:

Search By License Number (Letters - Numbers) like AAA-NNNN

License Number:

Issue Date:

Search By Name (Individual and/or Business and/or Owner)

Last Name:

First Name:

(Optional)

Business Name: Stonebrook Construction LLC

Owner Name:

Search By City and/or Postal Code

City:

Postal Code:

State of Idaho

## Bureau Of Occupational Licenses

Public Record Information

Name	Number	Expires	Action	Owner Name	City, State, Zip	Phone	Supervisor?	Specialty
------	--------	---------	--------	------------	------------------	-------	-------------	-----------

147

Wilder

FILED IN CASE NO. 09-835  
JUL 13 2009 AM 10:45

Steven F. Schossberger, ISB No. 5358  
Beth Smethers, ISB No. 7700  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
877 Main Street, Suite 1000  
P.O. Box 1617  
Boise, ID 83701-1617  
Telephone: 208.344.6000  
Facsimile: 208.954.5223  
Email: sschossberger@hawleytroxell.com  
bsmethers@hawleytroxell.com

Attorneys for Defendant Chase Home Finance, LLC

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STONEBROOK CONSTRUCTION, LLC, an )	
Idaho Limited Liability Company, )	Case No. CV-09-835
Plaintiff, )	
vs. )	ANSWER OF DEFENDANT CHASE
JOSHUA ASHBY and KATRINA ASHBY, )	HOME FINANCE, LLC TO THIRD
husband and wife; ALLIANCE TITLE & )	AMENDED COMPLAINT
ESCROW CORP.; and CHASE HOME )	
FINANCE, LLC )	
Defendants. )	
_____ )	

Defendant Chase Home Finance, LLC ("Chase"), by and through its attorneys of record,  
Hawley Troxell Ennis & Hawley LLP, responds to Plaintiff Stonebrook Construction, LLC's  
Third Amended Complaint, as follows:



### **FIRST DEFENSE**

Plaintiff's Third Amended Complaint ("Plaintiff's Complaint") Complaint, and each and every allegation thereof, fails to state a claim upon which relief may be granted.

### **GENERAL DENIAL**

Chase denies each and every allegation contained in Plaintiff's Complaint unless expressly and specifically admitted herein.

### **ANSWER**

1. In response to paragraphs 1 through 4 of Plaintiff's Complaint, Chase is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and, therefore, denies the same.

2. In response to paragraph 5 of Plaintiff's Complaint, Plaintiff sets forth a legal conclusion to which no response is required. To the extent a response is required, Chase denies the same.

3. In response to paragraph 6, Claim for Relief No. 1, sections a-i of Plaintiff's Complaint, Chase is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and, therefore, denies the same.

4. In response to paragraph 6, Claim for Relief No. 2, sections a-l of Plaintiff's Complaint, Chase is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and, therefore, denies the same.

5. In response to paragraph 6, Claim for Relief No. 2, section m, subpart 1 of Plaintiff's Complaint, Chase is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and, therefore, denies the same.

6. In response to paragraph 6, Claim for Relief No. 2, section m, subpart 2 of Plaintiff's Complaint, Chase admits only that Stonebrook Construction may claim some right, title, or interest in the property at issue in this action. Chase is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 6, Claim for Relief No. 2, section m, subpart 2 of Plaintiff's Complaint and, therefore, denies the same.

7. In response to paragraph 6, Claim for Relief No. 2, section m, subpart 3 of Plaintiff's Complaint, Chase is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and, therefore, denies the same.

8. In response to paragraph 6, Claim for Relief No. 3, section a of Plaintiff's Complaint, Chase is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and, therefore, denies the same.

9. In response to paragraph 6, Claim for Relief No. 3, section b of Plaintiff's Complaint, Chase admits the same.

10. In response to paragraph 6, Claim for Relief No. 4, sections a and b of Plaintiff's Complaint, Chase admits only that a Deed of Trust was recorded on June 4, 2008, Instrument No. 1301656, Bonneville County, Idaho, and that Deed of Trust speaks for itself. Chase is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 6, Claim for Relief No. 4, sections a and b of Plaintiff's Complaint and, therefore, denies the same.

11. In response to paragraph 6, Claim for Relief No. 4, section c of Plaintiff's Complaint, Chase admits the same.

12. In response to paragraph 6, Claim for Relief No. 4, section d of Plaintiff's Complaint, Chase admits only that a Deed of Trust was recorded on June 4, 2008, Instrument No. 1301656, Bonneville County, Idaho, and that Deed of Trust speaks for itself. Chase is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 6, Claim for Relief No. 4, section d of Plaintiff's Complaint and, therefore, denies the same.

13. In response to paragraph 6, Claim for Relief No. 4, sections e and f of Plaintiff's Complaint, Chase denies the same.

14. In response to paragraph 7 of Plaintiff's Complaint, Chase is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and, therefore, denies the same.

15. In response to paragraph 8 of Plaintiff's Complaint, Chase denies the same.

#### REQUEST FOR RELIEF

Chase denies that Plaintiff is entitled to the relief sought in the "Request for Relief" section of Plaintiff's Complaint.

#### **DEFENSES**

In asserting the following defenses, Chase does not assume the burden of proving any element thereof which any applicable case law, statute, rule, regulation or other authority places upon Plaintiff.

#### **SECOND DEFENSE**

Plaintiff has failed to join parties indispensable, and Plaintiff's Complaint should be dismissed based on Rule 12(b)(7) and Rule 19 of the Idaho Rules of Civil Procedure.

### **THIRD DEFENSE**

Plaintiff is barred from maintaining its action against Chase based upon the doctrine of waiver.

### **FOURTH DEFENSE**

Plaintiff is barred from maintaining its action against Chase based upon the doctrine of laches.

### **FIFTH DEFENSE**

Plaintiff is barred from maintaining its claim against Chase because Plaintiff has failed to satisfy requisite conditions precedent to the recordation, perfection, and foreclosure of the lien referred to in Plaintiff's Complaint.

### **SIXTH DEFENSE**

Plaintiff is barred from maintaining its action against Chase based upon the doctrine of estoppel.

### **SEVENTH DEFENSE**

Plaintiff is not entitled to recover an amount that exceeds the lien amount set forth in the claim of lien referred to in Plaintiff's Complaint.

### **EIGHTH DEFENSE**

Plaintiff's claim of lien referred to in Plaintiff's Complaint is invalid based on Plaintiff's failure to register as a contractor under the Idaho Contractor Registration Act.

### **RULE 11 STATEMENT**

Chase has considered and believes that it may have additional claims and defenses but does not have sufficient information at this time to assert the additional claims or defenses under Idaho Rule of Civil Procedure 11. Chase does not intend to waive any such claims or defenses

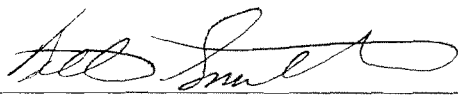
and specifically asserts its intention to amend this answer if, pending research and after discovery, facts come to light giving rise to additional claims and defenses.

WHEREFORE, Chase prays for judgment from the Court as follows:

1. That Plaintiff's Complaint be dismissed with prejudice and Plaintiff take nothing thereunder;
2. That Chase be awarded the reasonable attorneys' fees and costs necessarily incurred in defending this action; and
3. For such other and further relief as the Court deems just and proper.

DATED THIS 26<sup>th</sup> day of April, 2010.

HAWLEY TROXELL ENNIS & HAWLEY LLP

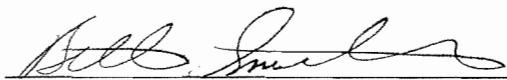
By   
Beth Smethers, ISB No. 7700  
Attorneys for Defendant Chase Home Finance,  
LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26<sup>th</sup> day of April, 2010, I caused to be served a true copy of the foregoing ANSWER OF DEFENDANT CHASE HOME FINANCE, LLC TO THIRD AMENDED COMPLAINT by the method indicated below, and addressed to each of the following:

B.J. Driscoll, Esq.  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
[Attorneys for Plaintiff]

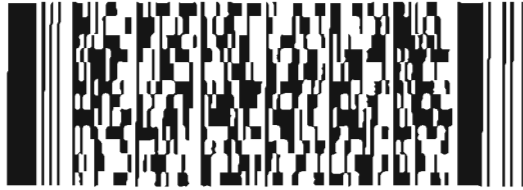
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ E-mail  
☒ Telecopy

  
\_\_\_\_\_  
Beth Smethers

# Routing Sheet

Place in Front of Hardcopy Document and then Scan or Fax

**B. J. Driscoll, SMITH, DRISCOLL &  
ASSOCIATES**



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208 529-4166

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STONEBROOK CONSTRUCTION, LLC, an)	
Idaho Limited Liability Company,)	
Plaintiff(s),	) Case No. CV-09-835
vs.	)
JOSHUA ASHBY and KATRINA ASHBY, )	
Husband and wife; ALLIANCE TITLE)	
& ESCROW CORP.; and CHASE HOME )	MINUTE ENTRY
FINANCE, LLC,	)
Defendant(s).	)
<hr/>	

On the 4th day of May, 2010, Defendant's motion for summary judgment came before the Honorable Joel E. Tingey, District Judge, in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. B.J. Driscoll appeared on behalf of the Plaintiff.

Mr. Steven Schossberger appeared on behalf of the Defendant

Mr. Schossberger presented Defendant's motion for summary judgment. Mr. Driscoll presented argument in opposition to the motion. Mr. Schossberger presented rebuttal argument.

The Court will leave the record open for additional briefing (if counsel should want it) and then consider the matter submitted. The Court will then issue an opinion as soon as possible.



Court was thus adjourned.

  
JOEL E. TINGEY  
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of May, 2010, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE

  
Deputy Court Clerk

B. J. Driscoll  
PO Box 50731  
Idaho Falls, ID 83405

Steven F. Schossberger  
Beth Smethers  
PO Box 1617  
Boise, ID 83701-1617

B. J. Driscoll, Esq. – ISB # 7010  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
Telephone: (208) 524-0731  
Facsimile: (208) 529-4166  
Email: bjd@eidaholaw.com

2010 MAY 11 10:17

CLERK OF DISTRICT COURT  
DIVISION  
COUNTY

Attorneys for Stonebrook Construction, LLC

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STONEBROOK CONSTRUCTION, LLC,  
an Idaho Limited Liability Company,

Plaintiff,

v.

JOSHUA ASHBY and KATRINA ASHBY,  
husband and wife; ALLIANCE TITLE &  
ESCROW CORP.; and CHASE HOME  
FINANCE, LLC;

Defendants.

Case No. CV-09-835

**SUPPLEMENTAL AFFIDAVIT OF  
TYLER SCHWENDIMAN**

STATE OF IDAHO )  
 ) ss.  
County of Bonneville )

I, TYLER SCHWENDIMAN, states and declares the following under oath:

1. I am a managing member of the plaintiff, Stonebrook Construction, LLC,  
in this action, I am over the age of 21, and I make this affidavit on my personal  
knowledge.

public records request for the original Application for Contractor Registration that I submitted for a contractor's license in April 2006.

3. I have reviewed the Application for Contractor Registration and certificate of general liability insurance and they are true and correct copies of the original application and certificate that I filled out and submitted for a contractor's license back in April 2006. My signature is on page two of the Application.

4. All names, addresses, dates of birth, and Social Security Numbers in the Application are the same information that Stonebrook Construction has continuously used from the time I submitted the application to the present.

5. To protect my privacy and the privacy of Mr. Burton, I have redacted all but the last four digits of the Social Security Numbers that appear in the Application.

6. Brandon Burton is still the only other part owner of the business.

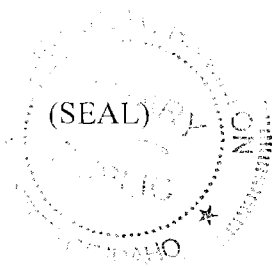
7. My Application clearly explains to the Idaho Bureau of Occupational Licenses that Mr. Burton and I intended to operate a general contracting business as Stonebrook Construction. Because the Idaho Bureau of Occupational Licenses approved my Application, issued a license to Stonebrook Construction, and then never contacted me regarding any problems, deficiencies, or concerns with the Application, Mr. Burton and I understood and reasonably believed that we were doing business in full compliance with the Idaho contractor registration law. Mr. Burton and I always understood that we had complied with the Idaho contractor registration law and have always used our best efforts to comply with all applicable laws.

Further your affiant sayeth naught.

By: \_\_\_\_\_

Tyler Schwendiman

SUBSCRIBED AND SWORN TO before me this 10<sup>th</sup> day of May, 2010.



\_\_\_\_\_  
Notary Public for the State of Idaho  
Residing at Idaho Falls, Idaho  
My Commission Expires: 04/11/11

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 10 day of May, 2010, I caused a true and correct copy of the foregoing **SUPPLEMENTAL AFFIDAVIT OF TYLER SCHWENDIMAN** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

- ☒ U.S. Mail  
☐ Facsimile Transmission  
☐ Overnight Delivery  
☐ Hand Delivery

Steven F. Schossberger, Esq.  
Beth Smethers, Esq.  
HAWLEY, TROXELL, ENNIS  
& HAWLEY, LLP  
877 Main Street, Suite 1000  
P. O. Box 1617  
Boise, ID 83701-1617

\_\_\_\_\_  
B. J. Driscoll

***Exhibit “A”***



# STATE OF IDAHO

## BUREAU OF OCCUPATIONAL LICENSES

Owyhee Plaza  
1109 Main St., Suite 220  
Boise, Idaho 83702-5642  
(208) 334-3233  
FAX (208) 334-3945  
E-Mail [ibol@ibol.idaho.gov](mailto:ibol@ibol.idaho.gov)  
Website [www.ibol.idaho.gov](http://www.ibol.idaho.gov)

### RESPONSE TO RECORDS REQUEST

RESPONSE DATE: April 20, 2010

NAME OF REQUESTOR: Tyler Schwendiman  
5304 Tildy Cir  
Ammon ID 83401

DATE OF REQUEST: April 16, 2010

☒ Your request concerning **your original application** has been approved and the public records you requested are attached.

☐ Your request concerning [ ], has been partially approved and the public records you requested are attached as noted.

☐ Additional time (*no more than 10 days from your original request.*) is required to locate or retrieve the records requested. Said records shall be available on \_\_\_\_\_, or further information will be provided regarding your request.

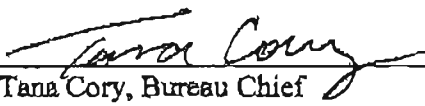
☐ Your request for documents concerning [ ] has been denied due to the following records being exempt from public disclosure.

Exempt Record

Idaho Code Section  
**9-340C (8)**

☒ The attorney for the Bureau of Occupational Licenses has reviewed your request and this response.

NOTICE: THE BUREAU'S RELEASE OF RECORDS SUBSEQUENT TO A PUBLIC RECORDS REQUEST IS IN ACCORDANCE WITH IDAHO CODE § 9-342. YOU HAVE 180 DAYS TO APPEAL THIS DECISION BY FILING A PETITION IN STATE DISTRICT COURT IN THE COUNTY WHERE ALL OR PART OF THE RECORDS ARE LOCATED PURSUANT TO IDAHO CODE § 9-343.

  
Tana Cory, Bureau Chief  
Custodian of the Official Record or Agent  
Idaho Bureau of Occupational Licenses



TYLER SCHWENDIMAN

STATE OF IDAHO  
OCCUPATIONAL LICENSES  
Main Street, Suite 220  
Boise, Idaho 83702-5642

RECEIVED

APR 21 2006

OCCUPATIONAL LICENSES

## APPLICATION FOR CONTRACTOR REGISTRATION

I hereby make application for registration as a contractor in Idaho under the provisions of Title 54, Chapter 52, Idaho Code as either a (You MUST choose either Individual or Entity).

☒ Individual (Personal) Registration☐ Entity (Business) Registration

1. Name of Individual OR Entity Stonebrook Construction  
Print the name under which business is conducted. The registration will be issued bearing the name listed above.

2. Business Address 5304 Fildy C.T. Ammon, ID 83401  
(This is your Address of Record and is public record) Street City State Zip

3. Mailing Address Same  
(This address is not public record) Street/PO Box City State Zip

4. For Individual Registration: Date of Birth mm dd yyyy Social Security No. 73-122, I.C. requires all applicants to provide a Social Security number.

OR

For Entity Registration: Employer Identification Number. IF APPLICABLE \_\_\_\_\_, and

NOTE: Applicants for ENTITY registration MUST list below or attach the name and address of each principal, member, partner, shareholder, & any other person claiming an ownership interest in the business entity named above.

Brandon Burton 03-02-1983 9241/3630 Spectrum Dr. Idaho Falls, ID  
Partowner 83401

5. Business phone (208) 390-4285 E-mail [redacted]

6. Are you currently licensed as a public works contractor or a construction manager? ☐ Yes ☒ No  
If Yes, please attach a copy of your license and enter your license number and state of licensure here - \_\_\_\_\_

7. Type of construction New Homes General Contractor

8. You must hold Worker's Compensation Insurance or provide a statement as to why such coverage is not required. You must attach the certificate and enter the name of the insurance provider company, the certificate number, and the policy effective date.

Insurance Company \_\_\_\_\_ Certificate or Policy # \_\_\_\_\_ Effective date \_\_\_\_\_

OR

Provide a statement as to why such coverage is not required under the laws governing Worker's Compensation. (72-101 - 230, I.C.)

Company has no employees so worker's C. coverage is N/A

9. You must hold a general liability insurance policy, of not less than \$300,000 single limit. You must attach the certificate and enter the name of the insurance provider company, the certificate number, and the policy effective date.

Mutual of Enumclaw 04/19/06  
Insurance Company Certificate or Policy # Effective date

10. Have you or any other owner referenced by this application ever been licensed or registered as a contractor in any jurisdiction (any city, county, state or federal entity)? ☐ Yes ☒ No  
(If Yes, specify which jurisdictions below.)

Continued on next page

**APPLICATION FOR CONTRACTOR REGISTRATION**  
(continued)

11. Have you or any other owner referenced by this application ever had a contractor license or registration revoked, suspended or otherwise sanctioned? ☐ Yes ☒ No  
(If Yes, a copy of the charges and final order must be received by the Board directly from each issuing authority.)

**AFFIDAVIT**

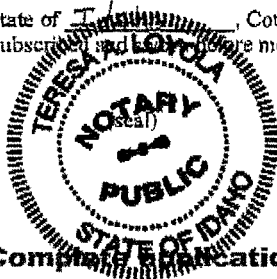
I hereby certify under penalty of perjury that the information provided above is true and accurate to the best of my knowledge and belief. I further certify that I have reviewed and will comply with the Idaho Laws and Rules governing Contractors, and that I will maintain in effect the required Worker's Compensation Insurance and general liability insurance. I also hereby authorize and direct any person, agency, firm, or other entity to release, upon the request of the Bureau of Occupational Licenses or its authorized representative, any information, report, record, statement, recommendation, or evidence that may have bearing on my eligibility for or maintenance of the registration for which I am applying. I also hereby authorize the Bureau to release the information provided on this application about me that may otherwise be protected or confidential to other governmental agencies upon request.

Tyler Schwendiman

Print Applicant Name or  
Print Entity's Authorized Agent Name

[Signature]  
Signature of Individual Applicant or  
Signature of Entity's Authorized Agent

State of Idaho, County of BONNEVILLE, ss.  
Subscribed and sworn to before me this 19<sup>th</sup> day of April, 2010.



[Signature]  
Notary Public official signature  
my commission expires 8/31/2011

**Complete applications are #1 priority & are processed and presented to the Board within 7 business days.**

**DID YOU REMEMBER TO:**

Check either "Individual" or "Entity"

Print the Registrant's name & address

Answer ALL of the Questions

**ATTACH both General Liability & Workman's Compensation Insurance Certificates**

**Include Public Works or Construction Manager Certificate (if applicable)**

**Include the registration fee**

**Sign & have the application notarized**

**Attach the fee**

**\*\*\*PLEASE DO NOT CALL THE BUREAU REGARDING APPLICATION STATUS\*\*\***



ACORD CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 04/19/2006
PRODUCER Holden-McCarty Insurance PO Box 50798 Idaho Falls ID 83405 208-522-3380	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Stonebrook Construction 5304 Tildy Circle Ammon ID 83406	INSURERS AFFORDING COVERAGE	NAIC #
	INSURER A: Mutual of Enumclaw	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	HO11218187	04/19/2006	04/19/2007	EACH OCCURRENCE \$ 300,000 DAMAGE TO RENTED PREMISES (En 10000/10000) \$ MED EXP (Any one person) \$ 1,000 PERSONAL & ADV INJURY \$ 300,000 GENERAL AGGREGATE \$ PRODUCTS - COM/PROP AGG \$ 300,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (En accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Does Bookkeeping, bids and management sub-contractors, Collects Certificates of Insurance from all sub-Contractors.

## CERTIFICATE HOLDER

Idaho Contractors Board  
Bureau of Occupational Licenses  
1109 Main Street, Suite 220  
Boise, ID 83702-5642

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Michael J. Rykala - CSR*

B. J. Driscoll, Esq. – ISB # 7010  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
Telephone: (208) 524-0731  
Facsimile: (208) 529-4166  
Email: bjd@eidaholaw.com

2010 MAY 11 11:17

CLERK OF DISTRICT COURT  
SEVENTH JUDICIAL DISTRICT  
IDAHO

Attorneys for Stonebrook Construction, LLC

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STONEBROOK CONSTRUCTION, LLC,  
an Idaho Limited Liability Company,

Plaintiff,

v.

JOSHUA ASHBY and KATRINA ASHBY,  
husband and wife; ALLIANCE TITLE &  
ESCROW CORP.; and CHASE HOME  
FINANCE, LLC;

Defendants.

Case No. CV-09-835

**SUPPLEMENTAL BRIEF**

Pursuant to the court's instructions at the hearing held on May 4, 2010, the plaintiff, Stonebrook Construction, LLC ("Stonebrook"), files this supplemental brief and accompanying affidavit in opposition to the motion for summary judgment filed by the defendant, Chase Home Finance, LLC ("Chase").

As part of the Idaho Contractor Registration Act ("Act") at issue in this case, I.C. § 54-5201, *et seq.*, the Idaho Legislature established the Idaho Contractors Board ("Board") as part of the Idaho Bureau of Occupational Licenses. I.C. § 52-5406. The Board "shall enforce the minimum standards and requirements therefor as provided by this chapter and by rule adopted by the board." I.C. § 52-5407. In carrying out its duty

to enforce the Act, the Board has the “powers and duties” to “[a]ccept or reject applications for registration,” “[f]urnish standards and procedures and prescribe reasonable rules for applications, qualifications and registration of contractors,” and “investigate, classify and determine the qualifications of applicants for registration pursuant to this chapter.” *Id.*

Here, the “Application for Contractor Registration” attached to the affidavit of Tyler Schwendiman establishes that Schwendiman put the Board on notice that he and Brandon Burton, as co-owners of a business named “Stonebrook Construction,” sought a license for general contracting services.<sup>1</sup> The Board approved the Application, issued a license, and then never contacted Schwendiman regarding any problems, deficiencies, or concerns with the Application.<sup>2</sup> Schwendiman and Burton understood and reasonably believed that we were doing business in full compliance with the Act.<sup>3</sup> Schwendiman and Burton always understood that they had complied with the Act.<sup>4</sup>

Because the Board issued a license based on the Application and then never indicated to Schwendiman or Burton that they were not in compliance with the Act, Schwendiman and Burton reasonably believed that they satisfied the “minimum standards” of the Act. I.C. § 52-5407. The Board did not “reject” the Application. *Id.* The Board did not require a separate application and license for Burton even though Schwendiman clearly identified Burton as a co-owner of the general contracting business.<sup>5</sup> The Board did not require a separate entity filing even though Schwendiman

---

<sup>1</sup> See Exhibit “A” to the Affidavit of Tyler Schwendiman filed concurrently herewith.

<sup>2</sup> See the Affidavit of Tyler Schwendiman filed concurrently herewith.

<sup>3</sup> See the Affidavit of Tyler Schwendiman filed concurrently herewith.

<sup>4</sup> See the Affidavit of Tyler Schwendiman filed concurrently herewith.

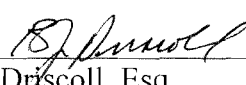
<sup>5</sup> See Exhibit “A” to the Affidavit of Tyler Schwendiman filed concurrently herewith.

indicated that he and Burton would do business as Stonebrook Construction.<sup>6</sup> Despite Schwendiman plainly describing the manner in which he Burton intended to do business, the Board did not “determine” that the “applicants for registration” did not meet the “qualifications” under the Act. *Id.* Given the detail of the Application and the Board’s approval and subsequent renewals, Schwendiman and Burton should not be punished with a *post hoc* determination that their Application did not satisfy the requirements of the Act.

For the reasons set forth herein, the court should deny Chase’s motion for summary judgment.

DATED this 10 day of May, 2010.

SMITH, DRISCOLL & ASSOCIATES, PLLC

  
B. J. Driscoll, Esq.  
Attorneys for Plaintiff

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 10 day of May, 2010, I caused a true and correct copy of the foregoing **SUPPLEMENTAL BRIEF** to be served by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by hand delivery, facsimile transmission, or overnight delivery, addressed to the following:

- ☒ U.S. Mail  
☐ Facsimile Transmission  
☐ Overnight Delivery  
☐ Hand Delivery

Steven F. Schossberger, Esq.  
Beth Smethers, Esq.  
HAWLEY, TROXELL, ENNIS  
& HAWLEY, LLP  
877 Main Street, Suite 1000  
P. O. Box 1617  
Boise, ID 83701-1617

  
B. J. Driscoll

<sup>6</sup> See Exhibit “A” to the Affidavit of Tyler Schwendiman filed concurrently herewith.

Steven F. Schossberger, ISB No. 5358  
 Beth Smethers, ISB No. 7700  
**HAWLEY TROXELL ENNIS & HAWLEY LLP**  
 877 Main Street, Suite 1000  
 P.O. Box 1617  
 Boise, ID 83701-1617  
 Telephone: 208.344.6000  
 Facsimile: 208.954.5260  
 Email: sschossberger@hawleytroxell.com  
 bsmethers@hawleytroxell.com

2010 MAY 14 PM 3:19

U.S. DISTRICT COURT  
 MAGISTRATE DIVISION  
 BONNEVILLE COUNTY  
 IDAHO

Attorneys for Defendant Chase Home Finance, LLC

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STONEBROOK CONSTRUCTION, LLC,  
 an Idaho Limited Liability Company,

Plaintiff,

vs.

JOSHUA ASHBY and KATRINA ASHBY,  
 husband and wife; ALLIANCE TITLE &  
 ESCROW CORP.; and CHASE HOME  
 FINANCE, LLC,

Defendants.

Case No. CV-09-835

DEFENDANT CHASE HOME  
 FINANCE, LLC'S SUPPLEMENTAL  
 BRIEF IN SUPPORT OF MOTION FOR  
 SUMMARY JUDGMENT

COMES NOW Defendant Chase Home Finance, LLC ("Chase"), by and through its undersigned counsel of record, Hawley Troxell Ennis & Hawley LLP, and respectfully submits the following supplemental brief in support of motion for summary judgment.

# **I. INTRODUCTION**

In its supplemental brief, Plaintiff Stonebrook Construction, LLC ("Stonebrook") again attempts to circumvent the direct mandate of the Idaho Contractor Registration Act. Despite Stonebrook's claims that Tyler Schwendiman's Application for Contractor Registration

("Application") was intended to include the registration for Stonebrook Construction, the Application clearly shows the application was for the "Individual (Personal) Registration" of Schwendiman. In fact, at the time of the Application, Stonebrook Construction was merely an assumed business name, not the entity Stonebrook Construction, LLC. In short, the Claim of Lien was filed and recorded on behalf of Stonebrook Construction, LLC and Stonebrook Construction, LLC was not a registered contractor pursuant to the Act. Consequently, Stonebrook's Claim of Lien is invalid as a matter of law.

## II. ARGUMENT

It is unlawful for any person—which includes any individual, limited liability company, etc.—to engage in the business of a contractor without being registered under the Act. And, as plainly set forth in the Act, if a contractor fails to register under the Act, that contractor "shall be deemed to have conclusively waived any right to place a lien upon real property . . . ." Idaho Code § 54-5208.

Stonebrook Construction, LLC is the only "person" that entered into a contract with the property owners and recorded a lien on the property. Plaintiff's Third Amended Complaint ("Complaint"), ¶ 6a, m. The fact that one of the members of the LLC is a registered contractor and mentioned "Stonebrook Construction" in the Application does not change the fact that Stonebrook Construction, LLC recorded the lien on the property and Stonebrook Construction, LLC is not a registered contractor. Affidavit of Steven F. Schossberger in Support of Chase Home Finance, LLC's Motion for Summary Judgment, filed on March 15, 2010, ¶¶ 4-6.

In fact, in the Application, Schwendiman specifically states that he is making the application for registration as a contractor as a "Individual (Personal) Registration."

Supplemental Affidavit of Tyler Schwendiman ("Schewendiman aff."), Ex. A. He also provided

his date of birth and social security number, which were required “for individual registration.” *Id.* The importance of the designation regarding whether the applicant is registering as an “Individual” or an “Entity” is further evidenced by the reminder section of the application form that states, “DID YOU REMEMBER TO: Check either ‘Individual’ or ‘Entity.’” *Id.* Based on Swenidman’s statements, the Bureau of Occupational Licenses (the “Bureau”) properly registered Tyler Schwendiman, not “Stonebrook Construction,” as a contractor. *Id.* There is simply nothing to indicate that Scwendiman intended to register the entity “Stonebrook Construction.”

Further, at the time of the Application, “Stonebrook Construction” was merely an assumed business name. Supplemental Affidavit of Steven F. Schossberger in Support of Motion for Summary Judgment (“Schossberger aff.”), filed concurrently herewith, Ex. A. On April 19, 2006, a “Certificate of Assumed Business Name” was filed with the Idaho Secretary of State for “Stonebrook Construction.” *Id.* The Application for the registration of Tyler Schwendiman as a contractor was received by the Bureau two days later. Schwendiman Aff., Ex. A. However, the lien claimant Stonebrook Construction, LLC was not formed until February 12, 2007 when the Articles of Organization for Stonebrook Construction, LLC were filed with the Idaho Secretary of State. Schossberger aff., Ex. B. Consequently, not only does the Application show that Schwendiman did not intend to register the entity “Stonebrook Construction” as a contractor under the Act, the Stonebrook Construction, LLC entity—which is

the actual lien claimant— did not even exist until almost a year after Schwendiman filed the Application.<sup>1</sup>

The lien claimant Stonebrook Construction, LLC is required to be registered as a contractor under the Act. Its failure to register is a complete bar to placing a lien on the property and, therefore, its lien claim is invalid.

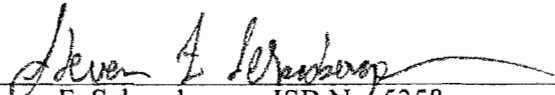
### III. CONCLUSION

For each of the above and foregoing reasons, Chase's motion for summary judgment on the Third Amended Complaint should be granted in its entirety.

DATED THIS 14 day of May, 2010.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By

  
Steven F. Schossberger, ISB No. 5358  
Attorneys for Defendant Chase Home  
Finance, LLC

---

<sup>1</sup> The lien claimant Stonebrook Construction, LLC was not registered with the Bureau of Occupational Licenses until March 11, 2010, which is more than a year and a half after the claim of lien was recorded on the property. Schossberger aff., Ex. C; Complaint, ¶ 6m.

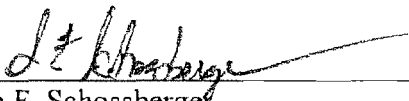


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14 day of April, 2010, I caused to be served a true copy of the foregoing DEFENDANT CHASE HOME FINANCE, LLC'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT by the method indicated below, and addressed to each of the following:

B. J. Driscoll, Esq.  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, ID 83405-0731  
[Attorneys for Plaintiff]

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ E-mail  
☒ Telecopy: 208.529.4166

  
\_\_\_\_\_  
Steven F. Schossberger

2010 MAY 14 PM 3:19

CLERK OF DISTRICT COURT  
JUDICIAL DISTRICT SEVENTH  
BOISE, IDAHO COUNTY  
IDAHO

Steven F. Schossberger, ISB No. 5358  
Beth Smethers, ISB No. 7700  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
877 Main Street, Suite 1000  
P.O. Box 1617  
Boise, ID 83701-1617  
Telephone: 208.344.6000  
Facsimile: 208.954.5260  
Email: sschossberger@hawleytroxell.com  
bsmethers@hawleytroxell.com

Attorneys for Defendant Chase Home Finance, LLC

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STONEBROOK CONSTRUCTION, LLC, )  
an Idaho Limited Liability Company, )  
Plaintiff, )  
vs. )  
JOSHUA ASHBY and KATRINA ASHBY, )  
husband and wife; ALLIANCE TITLE & )  
ESCROW CORP.; and CHASE HOME )  
FINANCE, LLC, )  
Defendants. )

Case No. CV-09-835

SUPPLEMENTAL AFFIDAVIT OF  
STEVEN F. SCHOSSBERGER IN  
SUPPORT OF DEFENDANT CHASE  
HOME FINANCE, LLC'S MOTION FOR  
SUMMARY JUDGMENT

Steven F. Schossberger, being first duly sworn upon oath, deposes and says:

1. I make this affidavit based on my personal knowledge in support of Defendant Chase Home Finance, LLC's ("Chase") motion for summary judgment on the third amended complaint.

SUPPLEMENTAL AFFIDAVIT OF STEVEN F. SCHOSSBERGER IN SUPPORT OF  
DEFENDANT CHASE HOME FINANCE, LLC'S MOTION FOR SUMMARY JUDGMENT -

2. I am a partner of the law firm Hawley Troxell Ennis & Hawley LLP, counsel of record for Chase.

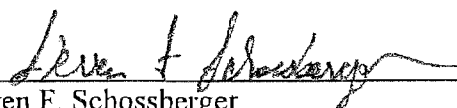
3. Attached hereto as Exhibit A is a true and correct copy of the Certificate of Assumed Business Name of Stonebrook Construction, dated April 19, 2006 with the Idaho Secretary of State.

4. Attached hereto as Exhibit B is a true and correct copy of the Articles of Organization Limited Liability Company of Stonebrook Construction, LLC, dated February 12, 2007 with the Idaho Secretary of State.

5. On May 14, 2010, I performed an online search on the State of Idaho's website providing information from the State of Idaho Bureau of Occupational Licenses for contractors who are registered under the Idaho Contractor Registration Act. Title 54, Chapter 52, Idaho Code.

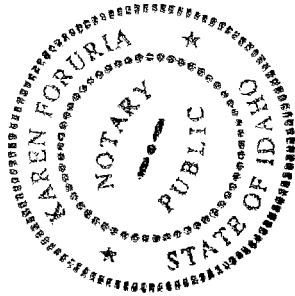
6. Attached hereto as Exhibit C is a true and correct copy of the Public Record information regarding Stonebrook Construction, LLC's registration as a contractor.

Further your affiant sayeth naught.

  
\_\_\_\_\_  
Steven F. Schossberger

STATE OF IDAHO            )  
                                      ) ss.  
County of Ada                )

SUBSCRIBED AND SWORN before me this 14<sup>th</sup> day of May, 2010.



Karen Foruria  
Notary Public for Idaho  
Residing at Karen Foruria  
My commission expires 6-15-11

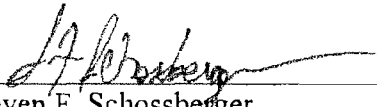
SUPPLEMENTAL AFFIDAVIT OF STEVEN F. SCHOSSBERGER IN SUPPORT OF  
DEFENDANT CHASE HOME FINANCE, LLC'S MOTION FOR SUMMARY JUDGMENT -

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14 day of March, 2010, I caused to be served a true copy of the foregoing SUPPLEMENTAL AFFIDAVIT OF STEVEN F. SCHOSSBERGER IN SUPPORT OF DEFENDANT CHASE HOME FINANCE, LLC'S MOTION FOR SUMMARY JUDGMENT by the method indicated below, and addressed to each of the following:

B. J. Driscoll, Esq.  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, ID 83405-0731  
[Attorneys for Plaintiff]

☐ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ E-mail  
☒ Telecopy: 208.529.4166

  
\_\_\_\_\_  
Steven F. Schossberger

SUPPLEMENTAL AFFIDAVIT OF STEVEN F. SCHOSSBERGER IN SUPPORT OF  
DEFENDANT CHASE HOME FINANCE, LLC'S MOTION FOR SUMMARY JUDGMENT -

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Tyler

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## CERTIFICATE OF ASSUMED BUSINESS NAME

Pursuant to Section 53-504, Idaho Code, the undersigned  
submits for filing a certificate of Assumed Business Name.

Please type or print legibly.

**NOTE: See instructions on reverse before filing.**

2006 APR 19 PM 2:14

 SECRETARY OF STATE  
STATE OF IDAHO

1. The assumed business name which the undersigned use(s) in the transaction of business is:

Stonebrook Construction

2. The true name(s) and business address(es) of the entity or individual(s) doing business under the assumed business name:

Name

Complete Address

Tyler Schwendiman

5304 Tildy Cir. Ammon, ID 83401

Brandon Burton

3630 Spectrum Dr. Idaho Falls, ID 83401

3. The general type of business transacted under the assumed business name is:

- |  |  |
|--|--|
| <input type="checkbox"/> Retail Trade                        | <input type="checkbox"/> Transportation and Public Utilities |
| <input type="checkbox"/> Wholesale Trade                     | <input checked="" type="checkbox"/> Construction             |
| <input type="checkbox"/> Services                            | <input type="checkbox"/> Agriculture                         |
| <input type="checkbox"/> Manufacturing                       | <input type="checkbox"/> Mining                              |
| <input type="checkbox"/> Finance, Insurance, and Real Estate |  |

4. The name and address to which future correspondence should be addressed:

Tyler Schwendiman

5304 Tildy Cir

Ammon, ID 83401

Submit Certificate of  
Assumed Business  
Name and \$25.00 fee to:

Secretary of State  
700 West Jefferson  
Basement West  
PO Box 83720  
Boise ID 83720-0080  
208 334-2301

5. Name and address for this acknowledgment copy is (if other than # 4 above):

Phone number (optional):

208-390-4285

Signature: \_\_\_\_\_

(signature required)

Printed Name: \_\_\_\_\_

Tyler Schwendiman

Capacity/Title: \_\_\_\_\_

Owner

(see instruction # 8 on back of form)

Secretary of State use only

2:\dms\forms\assumed\assumed.pdf  
Revised 04/2003

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## FILED EFFECTIVE

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**ARTICLES OF ORGANIZATION  
LIMITED LIABILITY COMPANY**

2007 FEB 12 AM 9:14

(Instructions on back of application)

 SECRETARY OF STATE  
STATE OF IDAHO

1. The name of the limited liability company is:

Stonebrook Construction L.L.C.

2. The street address of the initial registered office is:

3630 Spectrum Drive, Idaho Falls, ID 83401

and the name of the initial registered agent at the above address is:

Brandon Burton

3. The mailing address for future correspondence is:

3630 Spectrum Dr, Idaho Falls, ID 83401

4. Management of the limited liability company will be vested in:

 Manager(s) ☒ or Member(s) ☐ (please check the appropriate box)

5. If management is to be vested in one or more manager(s), list the name(s) and address(es) of at least one initial manager. If management is to be vested in the member(s), list the name(s) and address(es) of at least one initial member.

Name

Address

Brandon Burton
3630 Spectrum Dr, Idaho Falls, ID 83401
Tyler Schwendiman
5304 Tidy Circle, Ammon, ID 83406

6. Signature of at least one person responsible for forming the limited liability company:

Signature: *Brandon Burton*Typed Name: Brandon BurtonCapacity: 50% Owner

Signature: \_\_\_\_\_

Typed Name: Tyler SchwendimanCapacity: 50% Owner

Secretary of State use only

WS 9168

 IDAHO SECRETARY OF STATE  
02/13/2007 05:00  
CX: 1129 CT: 209625 IN: 1032577  
1 @ 100.00 = 100.00 ORG# LLC 02

State of Idaho

## Bureau Of Occupational Licenses

## Public Record Information (Detail)

## Public Record

Business Name: STONEBROOK CONSTRUCTION LLC  
Owner: TYLER SCHWENDIMAN, BRANDON BURTON  
Profession: IDAHO CONTRACTORS BOARD  
Type: CONTRACTING BUSINESS  
Number: RCE - 29985  
Address Of Record:  
City/State/Zip: AMMON ID 83401  
Country: USA  
Business Phone: (208) 390 - 4285  
Original Date of Issue: 5/11/2010  
Registered/Licensed By:  
License Status: Current  
Discipline:  
Expiration Date: 5/11/2011

## Disciplinary Action

None

NOTE: This document is a copy of the electronic record of the person named above and constitutes a verification of that record. If official certification of this record is required, a written request must be submitted together with a \$10.00 fee to the Bureau of Occupational Licenses, 1109 Main St., Suite 220, Boise, ID 83702.

180  
EXHIBIT C



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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STONEBROOK CONSTRUCTION, LLC,

Plaintiff,

vs.

JOSHUA ASHBY and KATRINA ASHBY,  
husband and wife; ALLIANCE TITLE &  
ESCROW CORP.; and CHASE HOME  
FINANCE, LLC,

Defendant.

Case No. CV-09-835

**MEMORANDUM DECISION AND ORDER**

THIS MATTER is before the Court on Defendant Chase Home Finance, LLC's (Chase) Motion for Summary Judgment. Chase seeks a dismissal of Plaintiff's complaint, and specifically Plaintiff's claim that it has a priority lien on the subject real property. The Court previously heard oral argument on the motion and then took the matter under advisement.

**I. FACTS**

The following facts are undisputed. Plaintiff Stonebrook Construction, LLC ("the LLC") is an Idaho Limited Liability Company owned by Tyler Schwendiman and Brandon Burton. The LLC furnished labor and materials for the construction of Defendants Joshua and Katrina Ashby's (the "Ashbys") home from November 15, 2007 through June 5, 2008. During this time, the LLC was not registered as a contractor in Idaho.

Prior to forming the LLC in February 2007, Schwendiman and Burton operated a construction business under the assumed name of “Stonebrook Construction.” Schwendiman held an individual registered general contractor license in the name of “Tyler Schwendiman d/b/a Stonebrook Construction,” which he maintained even after forming the LLC. After bringing the present action, Plaintiff filed an application for a contractor’s license.

The LLC alleges that the Ashbys failed to pay for the labor and materials that the LLC furnished in the construction of the Ashby’s home. The LLC initiated the present action against the Ashbys, Allaince Title & Escrow Corp., and Chase Home Finance, LLC (“Chase”), seeking, *inter alia*, to foreclose its lien on the property. At one point, the LLC received a default judgment against all Defendants, however, the Court set aside the default as to Chase. Chase now moves the Court for Summary Judgment.

## **II. STANDARD**

Summary judgment is only appropriate if “the pleadings, depositions, and admissions on file, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c). When considering a motion for summary judgment, any disputed facts are construed in favor of the nonmoving party, and all reasonable inferences that can be drawn from the record are drawn in favor of the nonmoving party. *Finholt v. Cresto*, 143 Idaho 894, 896, 155 P.3d 695, 697 (2007). If reasonable minds might come to different conclusions, summary judgment is inappropriate. *McPheters v. Maile*, 138 Idaho 391, 394, 64 P.3d 317, 320 (2003).

The party moving for summary judgment bears the burden of proving that no genuine issue of material fact exists. *Cramer v. Slater*, 146 Idaho 868, 873, 204 P.3d 508, 513 (2009). Once the moving party establishes the absence of a genuine issue of material fact, the burden then shifts to the nonmoving party. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007). In order to survive a motion for summary judgment, the nonmoving party must show that there is a triable issue. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 524, 808 P.2d 851, 861 (1991). “[A] complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *McGilvray v. Farmers New World Life Ins. Co.*, 136 Idaho 39, 42, 28 P.3d 380, 383 (2001), quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552 (1986). The non-moving party’s case must be anchored in something more than speculation; a mere scintilla of evidence is not enough to create a genuine issue. *Corbridge v. Clark Equip. Co.*, 112 Idaho 85, 87, 730 P.2d 960, 963 (1994).

### III. ANALYSIS

#### A. Right to lien foreclosure under the Act.

Chase argues that the LLC is precluded by the Idaho Contractor Registration Act from placing a lien on the subject property, and therefore the LLC’s claims (Counts Two, Three and Four) seeking to enforce its lien and declare its priority should be dismissed.<sup>1</sup>

Idaho Code § 54-5204 provides that it is unlawful for a person to engage in the business of a contractor without being registered. “Person” under the Act includes a limited liability company.

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<sup>1</sup> Count One is a breach of contract claim against Ashby for which Stonebrook obtained a default judgment.

I.C. § 54-5208 precludes the filing of a lien by a contractor who is not registered pursuant to the Act. That statute provides as follows:

A contractor who is not registered as set forth in this chapter, unless otherwise exempt, shall be denied and shall be deemed to have conclusively waived any right to place a lien upon real property as provided for in chapter 5, title 45, Idaho Code. This section shall not operate as a denial of lien rights for any subcontractor or independent contractor who is duly registered in accordance with this chapter and who is performing services at the direction of another contractor, nor shall it operate as a denial of lien rights for any employee of any contractor who is not duly registered, or for any supplier of materials to such unregistered contractor, so long as such subcontractor, independent contractor, employee or supplier did not have actual knowledge that such contractor was not duly registered, or who reasonably believed that such contractor was duly registered.

Idaho Code § 54-5217(2) limits the rights of an unregistered contractor to bring an action to collect for work performed. That section provides the following:

No person engaged in the business or acting in the capacity of a contractor, unless otherwise exempt, may bring or maintain any action in any court of this state for the collection of compensation for the performance of any act or contract for which registration is required by this chapter without alleging and proving that he was a duly registered contractor, or that he was otherwise exempt as provided for in this chapter, at all times during the performance of such act or contract. [emphasis added]

In applying the Act and the foregoing statutes, the Court first and foremost is to apply the plain meaning the statutes to the facts of the case. The principles of statutory interpretation are well established.

This Court “interprets statutes according to the plain, express meaning of the provision in question, and will resort to judicial construction only if the provision is ambiguous, incomplete, absurd, or arguably in conflict with other laws.” *Id.* A construction that leads to an absurd or unreasonably harsh result is disfavored. *Id.* at 690, 85 P.3d at 666. The goal “is to give effect to the purpose of the statute and the legislative intent in enacting it, which may be implied from the language used or inferred on grounds of policy or reasonableness.” *The Senator*,

*Inc., v. Ada County, Bd. of Equalization*, 138 Idaho 566, 570, 67 P.3d 45, 49 (2003).

*State v. Hickman*, 146 Idaho 178, 184, 191 P.3d 1098, 1104 (Idaho,2008).

The objective in interpreting a statute or ordinance is to derive the intent of the legislative body that adopted it. *Payette River Prop. Owners Ass'n*, 132 Idaho at 557, 976 P.2d at 483. Such analysis begins with the literal language of the enactment. *Id.* Where the language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to consider rules of statutory construction. *Id.* . . . However, ambiguity is not present merely because the parties present differing interpretations to the court. *Id.* Constructions that would lead to absurd or unreasonably harsh results are disfavored. *Id.* “Language of a particular section need not be viewed in a vacuum. And all sections of applicable statutes must be construed together so as to determine the legislature's intent.” *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14.

*Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 131, 176 P.3d 126, 136 (2007).

The interpretation of a statute is a question of law over which we exercise free review. *Zener v. Velde*, 135 Idaho 352, 355, 17 P.3d 296, 299 (Ct.App.2000). We will construe a statute as a whole, and the plain meaning of a statute will prevail unless clearly expressed legislative intent is contrary or unless the plain meaning leads to absurd results. *George W. Watkins Family v. Messenger*, 118 Idaho 537, 539-40, 797 P.2d 1385, 1387-88 (1990); *Zener*, 135 Idaho at 355, 17 P.3d at 299. Statutes that are *in pari materia*, i.e., relating to the same subject, must be construed together to give effect to legislative intent. *Paolini v. Albertson's Inc.*, 143 Idaho 547, 549, 149 P.3d 822, 824 (2006); *Union Pacific R.R. Co. v. Bd. of Tax Appeals*, 103 Idaho 808, 811, 654 P.2d 901, 904 (1982). In construing a statute, this Court examines the language used, the reasonableness of the proposed interpretations, and the policy behind the statutes. *Webb v. Webb*, 143 Idaho 521, 525, 148 P.3d 1267, 1271 (2006). This Court will avoid an interpretation that would lead to an absurd result or render a statute a nullity. *State v. Schmitt*, 144 Idaho 768, 770, 171 P.3d 259, 261 (Ct.App.2007); *State v. Harvey*, 142 Idaho 727, 730, 132 P.3d 1255, 1258 (Ct.App.2006).

*Johnson v. McPhee*, 210 P.3d 563, 569 (Idaho App.,2009)

The Court finds that under the plain meaning of the statutes, the LLC, as the contracting party, the entity filing the lien, and the entity bring this action, was required

to be registered under the Act. It was insufficient under the circumstances of this case that a member of the LLC was a registered contractor. The Court further concludes that this is not a case of a “combination” of “persons” conducting business. I.C. § 54-5203(6). The LLC is a distinct legal entity doing the construction work in this matter. It had not combined with any other person or entity to form a separate “unit” for the prosecution of the work. To hold otherwise would be to disregard the LLC’s status as a separate legal entity and contracting party.

B. Chase’s Standing

The LLC seeks to avoid summary judgment by arguing that Chase is not in the class of persons intended to be protected by the Act. Specifically, the LLC argues that “[t]he purpose of the Act is not to protect lenders’ security interests in real property against mechanic’s lien claims by unpaid contractors that fully performed.”

The public policy being implemented by the Act would be for the benefit of anyone having an interest in the property, including financial institutions which might finance construction and then rely on the property as security. Under I.C. §10-1202, where Chase’s contractual rights will be affected by the application of the statute, Chase has standing to raise the statute as a defense in this matter. Section 10-1202 provides as follows:

Any person interested under a deed, will, written contract or other writings constituting a contract or any oral contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

The Court finds that under the facts of this matter, Chase has standing to seek a determination as to the application of the registration statutes inasmuch as the application of the statutes will directly affect its rights with regard to the subject property.

### C. Substantial Compliance

The LLC argues that under the theory of substantial compliance, it still should be entitled to lien and foreclose a lien on the subject property. While there is nothing in the Act's plain language that allows for "substantial compliance", the LLC contends that the legislative purpose of the Act may nevertheless be satisfied through substantial compliance.

The Idaho Legislature has made clear that all statutes "are to be liberally construed, with a view to effect their objects and to promote justice." Idaho Code § 73-102; *George W. Watkins Family v. Messenger*, 118 Idaho 537, 797 P.2d 1385 (1990). Although the Idaho Supreme Court has yet to directly address whether the requirements of the Act may be satisfied through substantial compliance, it has applied the doctrine of substantial compliance to other statutes involving a contractor's right to lien. *Pierson v. Sewell*, 97 Idaho 38, 539 P.2d 590 (1975); *BMC West Corp. v. Horkley*, 144 Idaho 890, 174 P.3d 399 (2007). In *Pierson*, the Idaho Supreme Court stated:

Mechanic's and other related liens are creatures of statute, and statutory requirements must be substantially complied with in order to perfect a valid lien. Yet, these lien statutes are to be liberally construed: "The provisions of our mechanics' and laborers' lien law, as well as all other lien statutes, must be liberally construed with a view to effect their objects and promote justice." The purpose of these statutes is to compensate persons who perform labor upon or furnish material to be used in the construction, alteration or repair of a building or structure.

*Pierson*, 97 Idaho at 41 (internal citations omitted).

Several states with similar contractor registration statutes have adopted rules of substantial compliance. *Gross v. Bayshore Land Co.* 710 P.2d 1007 (Alaska 1985) (“The statutory bar precluding legal actions ... may be avoided by the contractor’s substantial compliance with the registration requirements.”); *Aesthetic Property Maintenance, Inc. v. Capital Indem. Corp.*, 900 P.2d 1210 (Ariz. 1995) (“We thus conclude that substantial compliance can be adequate under § 32-1153.”); *Latipac, Inc. v. Superior Court*, 411 P.2d 564 (Cal. 1966) (adopting a rule of substantial compliance where “such compliance has afforded to the obligor the protection contemplated by the statute”); *Nevada Equities, Inc. v. Willard Pease Drilling Co.*, 440 P.2d 122 (Nev. 1968) (holding that forfeiture was not justified where claimant “substantially complied with the licensing scheme”); *Koehler v. Donnelly*, 838 P.2d 980 (N.M. 1992) (“The doctrine of substantial compliance was adopted because we do not insist on literal compliance in a situation where the party seeking to escape his obligation has received the full protection contemplated by the statute.”); *Arctic Stone, Ltd. v. Dadvar*, 112 P.2d 582 (Wash. Ct. App. 2005) (“A contractor who fails to register is not barred from bringing an action if the contractor can prove substantial compliance[.]”).

Assuming that substantial compliance may under appropriate circumstances satisfy the requirements of the Idaho Act, the issue then becomes whether the LLC has raised at least a question of material fact as to the LLC having substantially complied with the Act.

In jurisdictions that have adopted the doctrine of substantial compliance, the underlying theme is that substantial compliance is adequate only when it satisfies the general policy or purpose of the statute. See *Aesthetic Property Maintenance, Inc. v.*



*Capital Indem. Corp.*, 900 P.2d 1210 (Ariz. 1995). Among the most popular tests for determining substantial compliance is that set forth in *Latipac, Inc. v. Superior Court*, 411 P.2d 564 (Cal. 1966). The elements of that test are: “(1) the contractor held a valid license at the time of contracting; (2) the contractor readily secured a renewal of that license; and (3) the responsibility and competence of the contractor’s managing officer was officially confirmed throughout the period of performance.” *Id.* at 568. At least one state has held that “a crucial element of substantial compliance is that the contractor hold a valid license at the time the contract is entered into.” *Koehler v. Donnelly*, 838 P.2d 980, 982 (1992). Other states focus on “the length of time during which the contractor did not hold a valid certificate of registration,” Washington Revised Code § 18.27.080, and whether or not the unlicensed contractor “knowingly ignore[d] the registration requirements.” *Aesthetic Property Maintenance, Inc.*, 900 P.2d at 1214 (holding that knowingly ignoring the registration requirements is “fatal to a claim of substantial compliance.”).

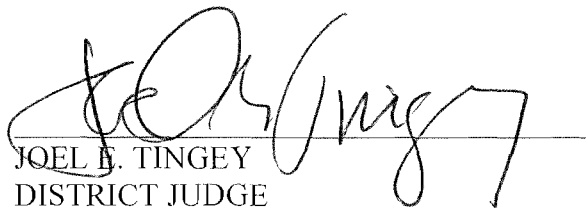
In this case, the LLC was not registered under the Act at the time of contracting nor was it registered when it filed a lien. Additionally, the LLC is deemed to have knowledge of the contracting requirements. A member of the LLC being registered does not constitute substantial compliance, nor does an ex post facto determination that the LLC is a reputable contractor. Where there was little or no effort to register the LLC prior to the work being performed, there would be no substantial compliance even if substantial compliance could satisfy the requirements of the Act.

## CONCLUSION

Based on the foregoing, the Court finds that the Act precludes the LLC from filing a lien and seeking to foreclosure and prioritize that lien. Accordingly, Chase is entitled to summary judgment dismissing the LLC's claims against it. Chase's motion for summary judgment is granted.

IT IS SO ORDERED.

Dated this 14 day of May, 2010.

  
JOEL E. TINGEY  
DISTRICT JUDGE

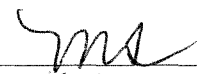
## CERTIFICATE OF SERVICE

I hereby certify that on this 14 day of May, 2010, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon, or by placement in the courthouse mailbox.

B.J. Driscoll  
SMITH, DRISCOLL & ASSOCIATES  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, ID 83405

Steven F. Schossberger  
HAWLEY TROXELL ENNIS & HAWLEY  
877 Main Street, Suite 1000  
P.O. Box 1617  
Boise, ID 83701-1617

Clerk of the District Court  
Bonneville County, Idaho

By   
Deputy Clerk

BONNEVILLE COUNTY

10 JUN -7 P3 53

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STONEBROOK CONSTRUCTION, LLC,  
an Idaho Limited Liability Company,

Plaintiff,

vs.

JOSHUA ASHBY and KATRINA ASHBY,  
husband and wife; ALLIANCE TITLE &  
ESCROW CORP.; and CHASE HOME  
FINANCE, LLC,

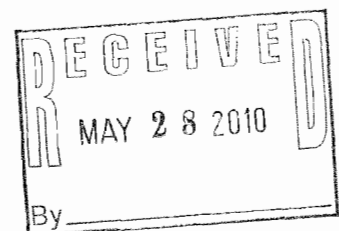
Defendants.

Case No. CV-09-835

JUDGMENT

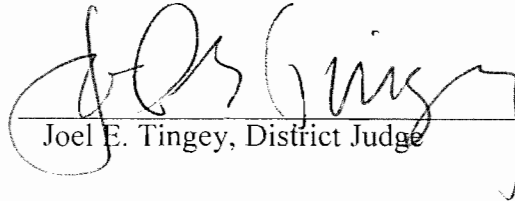
Pursuant to the Court's Memorandum Decision and Order filed May 14, 2010, granting Chase Home Finance, LLC's motion for summary judgment, it is hereby ORDERED ADJUDGED AND DECREED that:

1. Plaintiff Stonebrook Construction, LLC's ("Plaintiff") Third Amended Complaint is dismissed with prejudice; and



2. Plaintiff's Notice and Claim of Lien, dated August 8, 2008, recorded as Instrument No. 1308457, Recorder's Office of Bonneville County, Idaho, is hereby discharged, extinguished and void.

SO ORDERED 7 day of <sup>June</sup>~~May~~, 2010.

  
Joel E. Tingey, District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7 day of June, 2010, I caused to be served a true copy of the foregoing JUDGMENT by the method indicated below, and addressed to each of the following:

B. J. Driscoll, Esq.  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Avenue  
P.O. Box 50731  
Idaho Falls, ID 83405-0731  
[Attorneys for Plaintiff]

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ E-mail  
☐ Telecopy: 208.529.4166

Steven F. Schossberger  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
877 Main Street, Suite 1000  
P.O. Box 1617  
Boise, ID 83701-1617  
[Attorneys for Defendant Chase Home Finance, LLC]

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ E-mail  
☐ Telecopy: 208.954.5260

DATED THIS 7 day of June, 2010.

RONALD LONGMORE  
Clerk of the Court

By MS  
Deputy Clerk

B. J. Driscoll, Esq. – ISB # 7010  
**SMITH, DRISCOLL & ASSOCIATES, PLLC**  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
Telephone: (208) 524-0731  
Facsimile: (208) 529-4166  
Email: bjd@eidaholaw.com

2010 JUL -2 1 2:00

FILED  
CLERK OF DISTRICT COURT  
IDAHO FALLS, IDAHO

Attorneys for Stonebrook Construction, LLC

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STONEBROOK CONSTRUCTION, LLC,  
an Idaho Limited Liability Company,

Plaintiff,

v.

JOSHUA ASHBY and KATRINA ASHBY,  
husband and wife; ALLIANCE TITLE &  
ESCROW CORP.; and CHASE HOME  
FINANCE, LLC;

Defendants.

Case No. CV-09-835

**NOTICE OF APPEAL**

**TO: CHASE HOME FINANCE, LLC, and Steven F. Schossberger, Esq. and Beth Smethers, Esq., their attorneys of record, and to the clerk of the above-entitled court;**

**NOTICE IS HEREBY GIVEN THAT:**

1. The above-named plaintiff/appellant, Stonebrook Construction, LLC, an Idaho limited liability company ("Stonebrook"), appeals to the Idaho Supreme Court from the Seventh Judicial District Court's Memorandum Decision and Order entered May 14, 2010, and Judgment entered June 7, 2010 in the above-entitled action against

Stonebrook and in favor of the defendants/respondents, the Honorable Joel E. Tingey, District Judge, presiding.

2. Stonebrook has the right to appeal to the Idaho Supreme Court, and the judgment described in paragraph one above is subject to appeal pursuant to Idaho Appellate Rule 11(a).

3. The issues which Stonebrook intends to assert on appeal are the following:

a. Is substantial compliance with the Idaho Contractor Registration Act (I.C. § 54-5201, *et seq.*) sufficient to satisfy the requirements of that Act?

b. Does a limited liability company contractor substantially comply with the requirements of the Idaho Contractor Registration Act (I.C. § 54-5201, *et seq.*) where one of the individual members of the limited liability company was properly registered under the Act prior to the formation of the limited liability company, the individual member had registered using the same business name as the name of the subsequently formed limited liability company, the contact information for the limited liability company was the same as for the previously registered individual member, and there is no allegation that the limited liability company is an incompetent, dishonest, or unprincipled practitioner of construction?

c. Does the appellant have the right to recover its attorney's fees and costs incurred in pursuing this appeal?

4. Stonebrook does not request any transcript.

5. There has been no order entered sealing all or any part of the record or transcript.

6. Stonebrook requests the following documents be included in the clerk's record in addition to those automatically included under Idaho Appellate Rule 28:

- a. Chase Home Finance, LLC's Motion for Summary Judgment, dated March 11, 2010;
- b. Chase Home Finance, LLC's Memorandum in Support of Motion for Summary Judgment, dated March 11, 2010;
- c. Affidavit of Steven F. Schossberger in Support of Defendant Chase Home Finance, LLC's Motion for Summary Judgment, dated March 11, 2010;
- d. Stonebrook Construction, LLC's Brief in Opposition to Defendant Chase Home Finance, LLC's Motion for Summary Judgment, dated April 20, 2010;
- e. Affidavit of Tyler Schwendiman, dated April 20, 2010;
- f. Defendant Chase Home Finance, LLC's Reply Memorandum in Support of Motion for Summary Judgment, dated April 27, 2010;
- g. Affidavit of Beth Smethers in Support of Defendant Chase Home Finance, LLC's Motion for Summary Judgment, dated April 27, 2010;
- h. Supplemental Affidavit of Tyler Schwendiman, dated May 10, 2010;
- i. Supplemental Brief, dated May 10, 2010;
- j. Defendant Chase Home Finance, LLC's Supplemental Brief in Support of Motion for Summary Judgment, dated May 14, 2010; and



k. Supplemental Affidavit of Steven F. Schossberger in Support of Defendant Chase Home Finance, LLC's Motion for Summary Judgment, dated May 14, 2010.

7. I certify:

(a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested;

(b) That the reporter who reported the trial before the district court and from whom a transcript has been requested has been paid the estimated fee for preparation of the reporter's transcripts, if any;

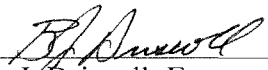
(c) That the estimated fee for preparation of the clerk's record has been paid;

(d) That the appellate filing fee has been paid; and

(e) That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 9 day of July, 2010.

SMITH, DRISCOLL & ASSOCIATES, PLLC

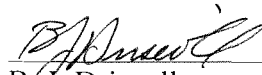
  
\_\_\_\_\_  
B. J. Driscoll, Esq.  
Attorneys for Plaintiff

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9 day of July, 2010, I caused a true and correct copy of the foregoing **NOTICE OF APPEAL** to be served, by placing the same in a sealed envelope and depositing in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

- ☒ U.S. Mail  
☐ Facsimile Transmission  
☐ Overnight Delivery  
☐ Hand Delivery

Steven F. Schossberger, Esq.  
Beth Smethers, Esq.  
HAWLEY, TROXELL, ENNIS  
& HAWLEY, LLP  
877 Main Street, Suite 1000  
P. O. Box 1617  
Boise, ID 83701-1617

  
B. J. Driscoll

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

RECEIVED  
BONNEVILLE DISTRICT COURT  
COURT OF APPEALS

2010 OCT -6 A 8:40

STONEBROOK CONSTRUCTION, LLC,  
an Idaho Limited Liability Company,

Plaintiff/Appellant,

v

CHASE HOME FINANCE, LLC,

Defendant-Respondent,

and

JOSHUA ASHBY and KATRINA ASHBY,  
husband and wife; ALLIANCE TITLE &  
ESCROW CORP.,

Defendants.

CLERK'S CERTIFICATE  
OF APPEAL

Case No. CV-2009-835  
Docket No 37868

Appeal from: Seventh Judicial District, Bonneville County

Honorable Joel E. Tingey, District Judge, presiding.

Case number from Court:

CV-2009-835

Order or Judgment appealed from: Memorandum Decision and Order, entered May 14-2010, and  
Judgment entered, June 7, 2010.

Attorney for Appellant:

B.J. Driscoll

Attorney for Respondent:

Steven Fredric Schossberger

Appealed by:

Stonebrook Construction, LLC

Appealed against:

Chase Home Finance, LLC

Notice of Appeal Filed:

July, 9-2010

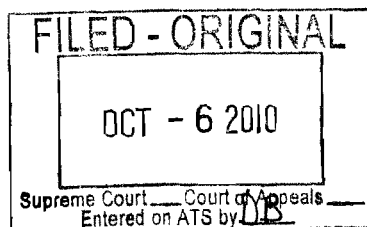
Appellate Fee Paid:

yes

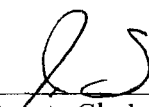
Was District Court Reporter's Transcript requested?

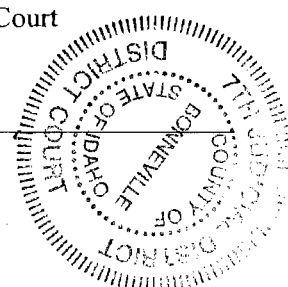
No

Dated: 2010 OCT 6, 2010



RONALD LONGMORE  
Clerk of the District Court

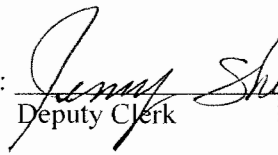
By:   
Deputy Clerk

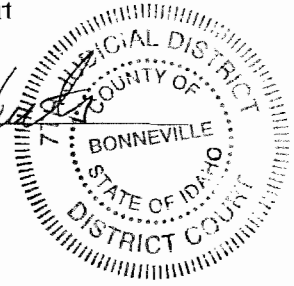


STONEBROOK CONSTRUCTION, LLC,  
Plaintiff/Appellant,  
v.  
CHASE HOME FINANCE, LLC,  
Defendant/Respondent,  
and  
JOSHUA ASHBY and KATRINA ASHBY,  
husband and wife; ALLIANCE TITLE &  
ESCROW CORP.,  
Defendants.

Case No. CV-2009-835  
Docket No 37868

RONALD LONGMORE  
Clerk of the District Court

By:   
Deputy Clerk



STONEBROOK CONSTRUCTION, LLC,  
Plaintiff/Appellant,  
v.  
CHASE HOME FINANCE, LLC,  
Defendant/Respondent,  
and  
JOSHUA ASHBY and KATRINA ASHBY,  
husband and wife; ALLIANCE TITLE &  
ESCROW CORP.,  
Defendants.

Case No. CV-2009-835  
Docket No 37868

202

RONALD LONGMORE  
Clerk of the District Court

By: *Jeremy Shultz*  
Deputy Clerk

